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No. 1167

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

C. W. CORSAR, Claimant and Owner of the
British Ship "MUSSELCRAG,"

Appellant,

vs.

J. D. SPRECKELS & BROS. COMPANY,

Appellee.

and

J. D. SPRECKELS & BROS. COMPANY,

Appellant,

vs.

C. W. CORSAR, Claimant and Owner of the
British Ship "MUSSELCRAG,"

Appellee.

FILED
FEB 25

TRANSCRIPT OF RECORD.

Upon Appeal and Cross-Appeal from the United
States District Court for the Northern
District of California.

Records of Circuit
Court of Appeals

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In the United States Circuit Court of Appeals, Ninth Circuit.

J. D. SPRECKELS & BROS. CO.,	}	No. 1167.
vs.		
The British Ship "MUSSELCRAG."		

Libelant,

Stipulation as to Printing Transcript. of Record.

It is hereby stipulated and agreed by and between the respective parties hereto that the log-book sent to the above-entitled court, with the apostles in the above case, need not be printed in the transcript of record by the clerk of said Circuit Court of Appeals.

Dated January 31st, 1905.

NATHAN H. FRANK,

Proctor for Libelant and Respondent.

PAGE, McCUTCHEN & KNIGHT,

Proctors for C. W. Corsar, Claimant and Appellant.

It is further stipulated and agreed that all titles of court and cause be omitted excepting that appearing in the statement and in lieu of such omissions there be inserted "(Title of Court and Cause)."

NATHAN H. FRANK,

Proctor for Libelant and Respondent.

PAGE, McCUTCHEN & KNIGHT,

Proctors for C. W. Corsar, Claimant and Appellant.

“unexecuted as a bond under section 941, R. S. U. S., was given to stay execution of process.”

July 7th, 1900: Claim filed by C. W. Corsar, as claimant, together with an admiralty stipulation for the release of the ship “Musselcrag,” etc., in the sum of \$16,000, which amount was fixed by a stipulation between the proctors for the respective parties, and notice of said bonding was given to the United States Marshal by the Clerk of said District Court.

October 27th, 1902: The above-entitled cause was heard on this day in the District Court of the United States for the Northern District of California at the city and county of San Francisco, before the Honorable John J. De Haven, Judge of said Court.

October 9th, 1903: Opinion filed.

October 27th, 1903: An interlocutory decree that libellant is not entitled to recover for cargo which was jettisoned, but is entitled to recover one-half the damage sustained by the remaining cargo, with interest from the date of filing the libel and costs of suit, was this day filed.

November 29th, 1904: The final decree in the above-entitled cause was filed.

December 29th, 1904: Notice of appeal by claimant C. W. Corsar was this day filed and served.

January 4th, 1905: Notice of appeal by the libellant was this day filed and served.

January 4th, 1905: Stipulation that transcript on appeal by claimant may be used on the appeal of J. D. Spreckels & Bros. Co., was this day filed.

[Title of Court and Cause.]

Libel.

To the Honorable JOHN J. DE HAVEN, Judge of the
District Court of the United States for the Northern
District of California:

The libel of J. D. Spreckels & Bros. Co., a corporation,
against the ship "Musselcrag," her tackle, apparel and
furniture, and against all persons lawfully intervening
for their interest therein, in a cause of contract civil and
maritime, alleges:

I.

That at all the times hereinafter mentioned the libel-
ant was, and still is, a corporation, organized under the
laws of the State of California, having its principal place
of business at the city and county of San Francisco, in
said State.

II.

That between the 30th day of June and the 17th day of
July, 1899, Messrs. Macfarlane, McCrindell & Co., of
Liverpool, England, shipped on board the ship "Mussel-
crag" then and there lying in the harbor of Antwerp, and
bound on a voyage to the Port of San Francisco, in good
order and well conditioned, 18,130 casks of cement, to be
transported by said vessel from said port of Antwerp to
the port of San Francisco, and there to be delivered unto
order in like good order and condition as when received,
the acts of God, Queen's enemies, fire, and all and every
other dangers and accidents of the seas, rivers and navi-
gation of whatever kind and nature soever excepted.

III.

That upon receipt of said cement the master of said vessel signed and delivered to said Macfarlane, McCrindell & Co. three bills of lading, copies of which are hereto attached, and made a part hereof, and thereafter the said McFarlane, McCrindell & Co. duly endorsed and delivered said bills of lading to this libelant, and this libelant is now the holder thereof.

IV.

That said vessel sailed from said port of Antwerp for the port of San Francisco, with said merchandise on board, where she arrived on or about the — day of June, 1900.

V.

That notwithstanding said libelant has paid the freight upon said cement as in said bills of lading provided, the master thereof has failed and neglected to deliver said cement in as good order and condition as when received, but on the contrary has failed to deliver — casks of said cement which owing to the unseaworthy condition of said vessel, and the carelessness and negligence of said master, were totally lost, to the damage of said libelant in the sum of \$1,233.00, and said master has further failed to deliver — casks in as good order and condition as when received, but on the contrary, owing to the unseaworthy condition of said vessel, and the negligence and carelessness of said master, the same were delivered in a greatly damaged condition, to the damage of this libel-

ant in the further sum of eleven thousand five hundred (11,500) dollars.

VI.

That said vessel is a foreign vessel, and is now in the port of San Francisco, and within the jurisdiction of this Honorable Court, and said vessel is about to leave this port and to leave the United States, and the said master has refused, and still refuses, to pay the said damage, or any part thereof.

VII.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore this libellant pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said ship "Musselcrag," her tackle, apparel and furniture, and that all persons claiming any right or interest therein may be cited to appear and answer all and singular the matters aforesaid; that this Honorable Court will be pleased to decree the payment of the sum of \$12,733.00 aforesaid, with costs and interest, that said vessel, her tackle, apparel and furniture, be condemned and sold to pay the same; and that this libellant have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. D. SPRECKELS & BROS. CO.,

Per F. S. SAMUELS,

Actg. Secty.

District of California—ss.

Sworn to before me this 3d day of July, A. D. 1900.

GEO. E. MORSE,
U. S. Commissioner.

ANDROS & FRANK,
Proctors for Libellant.

Exhibit "A."

Redcastle 3,000 Casks Cement

Cannon 5,000 Casks Cement.

8,000 Casks.

T.

1428" 11" 1" 20 at 14/ per ton £1000 0" 0"

Shipped, in good order and condition by Macfarlane, McCrindell & Co. in and upon the good Ship or Vessel called the "Musselcrag" whereof Robt. Johnston is Master for the present Voyage and now lying in the Harbour of Antwerp and bound for San Francisco to say

Eight Thousand Casks Cement

Merchandise, being marked and numbered as in margin and are to be Delivered in the like good order and well conditioned at the aforesaid Port of San Francisco (The Act of God, the Queen's Enemies, Fire, and all and every other dangers and accidents of the Seas, Rivers, and Navigation of whatever Nature and kind soever excepted) unto

Order

or to its Assigns Freight for said Goods to be paid by the consignees at the rate of Fourteen shillings sterling per ton of twenty hundred weights. All other conditions as per charter party dated Liverpool, 21st April, 1899, including Negligence Clause with average accustomed.

In witness whereof, the Master or Purser of the said Ship hath affirmed to Three Bills of Lading all of this tenor and date the one of which being accomplished the other two stand void.

Dated in Antwerp, the 30th day of June, 1899.

Weight and Contents Unknown.

Leakage and Breakage excepted.

ROBT. JOHNSTON.

[Endorsed]: Macfarlane, McCrindell & Co.

Redcastle 3,138 Casks Cement.

Cannon 1,001 Casks Cement.

4,139 Casks.

T.

739. 2. 0. 16 at 14/ per ton £517. 7. 6.

Shipped, in good order and condition by Macfarlane, McCrindell & Co. in and upon the good Ship or Vessel called the "Musselcrag" whereof R. Johnston is Master for the present Voyage, and now lying in the Harbour of Antwerp and bound for San Francisco to say ,

Four thousand one hundred and thirty-nine Casks Cement

Merchandise, being marked and numbered as in margin and are to be Delivered in the like good order and well conditioned at the aforesaid Port of San Francisco (The Act of God, the Queen's Enemies, Fire, and all and every other dangers and accidents of the Seas, Rivers, and Navigation of whatever Nature and kind soever excepted) unto

Order

or to its Assigns Freight for said Goods to be paid by the consignees at the rate of Fourteen shillings sterling per ton of twenty hundred weights. All other conditions as per charter party dated Liverpool, 21st April, 1899, including Negligence Clause with average accustomed.

In witness whereof, the Master or Purser of the said Ship hath affirmed to Three Bills of Lading all of this tenor and date the one of which being accomplished the other two to stand void.

Dated in Antwerp the 17th day of July, 1899.

Weight and Contents Unknown.

Leakage and Breakage excepted.

ROBT. JOHNSTON.

[Endorsed]: Deliver to Messrs. J. D. Spreckels & Bros. Co., San Francisco, or order. pp. Macfarlane, McCrindell & Co. Andrew McCrindell.

Redcastle 3,000 Casks Cement.

Cannon 3,000 Casks Cement.

6,000 Casks.

T.

1071'' 8'' 2'' 8 at 14/ per ton £750 ''0''0.

Shipped, in good order and condition by Macfarlane, McCrindell & Co. in and upon the good Ship or Vessel called the "Musselerag" whereof R. Johnston is Master for the present Voyage, and now lying in the Harbour of Antwerp and bound for San Francisco to say

Six Thousand Casks Cement

Merchandise, being marked and numbered as in margin and are to be Delivered in the like good order and well conditioned at the aforesaid Port of San Francisco (The Act of God, the Queen's Enemies, Fire, and all and every other dangers and accidents of the Seas, Rivers, and Navigation of whatever Nature and kind soever excepted) unto

Order

or to its Assigns Freight for said Goods to be paid by the consignees at the rate of Fourteen shillings sterling per ton of twenty hundred weights. All other conditions as per charter party dated Liverpool, 21st April, 1899, including Negligence Clause with average accustomed.

In witness whereof, the Master or Purser of the said Ship hath affirmed to Three Bills of Lading all of this

tenor and date the one of which being accomplished the other two to stand void.

Dated in Antwerp the 13th day of July, 1899.

Weight and Contents Unknown.

Leakage and Breakage excepted.

ROBT. JOHNSTON.

[Endorsed]: Deliver to Messrs. J. D. Spreckels & Bros. Co., San Francisco, or order. pp. Macfarlane, McCrindell & Co. Andrew McCrindell.

[Endorsed]: Filed Jul. 3, 1900. Geo. E. Morse, Clerk.

[Title of Court and Cause.]

Claim of C. W. Corsar.

To the Honorable J. J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The claim of C. W. Corsar, owner of the British ship "Musselcrag" to the said ship, her tackle, apparel and furniture, now in the custody of the marshal of the United States for the said Northern District of California, at the suit of J. D. Spreckels Bros. & Co. alleges.

That he is the sole owner of the said ship, her tackle, apparel and furniture, and that no other person is owner thereof.

Wherefore, this claimant pray that this Honorable Court will be pleased to decree a restitution of the same

to him, and otherwise right and justice to administer on the premises.

C. W. CORSAR,
By his Attorney in Fact,
ROBT. JOHNSTON.

N. District of California—ss.

Robert Johnston, being duly sworn, deposes and says: I am master and lawful bailee of the above-named owners of the ship "Mussefcrag," and am authorized to make this affidavit on their behalf. I have read the foregoing claim and know its contents. It is true as I verily believe.

ROBT. JOHNSTON.

Subscribed and sworn to before me this 7th day of July, A. D. 1900.

GEO. E. MORSE,
U. S. Commissioner.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Proctors for Claimant.

[Endorsed]: Filed Jul. 7, 1900. Geo. E. Morse, Clerk.

[Title of Court and Cause.]

Answer.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The answer of C. W. Corsar, owner of the ship "Mussefcrag," to the libel of the J. D. Spreckels Bros. Company respectfully shows to the Court:

I.

Answering unto the first, second, third and fourth articles in said libel, the respondent admits the same.

II.

Answering unto the fifth article in said libel, the respondent admits that the master of said ship failed to deliver all of said cement in as good order as when received, and that he failed to deliver — casks of said cement, and that the same were totally lost, but respondent denies that the same or any part thereof were lost, owing to the unseaworthy condition of said vessel or to the carelessness or negligence of the master thereof. The respondent admits that the said master failed to deliver — casks in as good order and condition as when received, and that the same were delivered in a damaged condition, but he denies that the said loss or damage was owing to the unseaworthy condition of said vessel, or to the carelessness or negligence of said master, and he denies that the said ship was unseaworthy or that the said master was careless or negligent, or that the libelant was damaged in the sums aforesaid, or either of them, or in any sum.

III.

The respondent avers that the said loss and damage were caused solely and entirely by the force of the winds and waves and the perils of the sea, which notwithstanding that the said ship had been and was up to that time in all respects seaworthy, so injured and strained her that the sea water, during a long season

of tempests and gales, was forced through her decks into and upon the cargo referred to, wetting and damaging the same. That the master and crew of said vessel took every precaution for the protection of said cargo and that the damage thereto was caused by the act of God and without fault on their part or insufficiency on the part of said vessel.

IV.

Answering unto the sixth article in said libel, this respondent admits the same.

V.

Answering unto the seventh article in said libel, this respondent admits the jurisdiction of this Court, but denies that all and singular the premises are true, except as the same are hereinbefore specially admitted.

Wherefore the respondent prays that the said libel be dismissed and for his costs.

C. W. CORSAR,
Respondent.

By H. L. E. MEYER,
His Attorney in Fact.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Proctors for Respondent.

State of California,

City and County of San Francisco.

}
} ss.

H. L. E. Meyer, being duly sworn, deposes and says: That he is the attorney in fact of C. W. Corsar, the respondent in the above-entitled cause; that said Corsar

14 *C.W.Corsar, Claimant, etc., vs. J.D.Spreckels & Bros.Co.*

is a nonresident of the Northern District of California; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes it to be true.

H. L. E. MEYER,

Subscribed and sworn to before me this 8th day of April, 1901.

[Seal]

JAMES L. KING,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Apr. 9, 1901. Geo. E. Morse, Clerk.
By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Depositions.

Monday, October 27, 1902.

Appearances:

NATHAN H. FRANK, Esq., for the Libelant.

CHARLES PAGE, Esq., for the Respondent.

This libel now came on for hearing before the Court in its regular order upon the calendar, when the following proceedings were had:

Mr. FRANK.—If your Honor, please, this is an action against the ship “Musselcrag” for damage to the cargo in transit from Antwerp to San Francisco. The libel

sets out the receipt of the cargo in good order; the issuance of bills of lading, copies of which are annexed to the libel state that the undertaking of the ship was to deliver the cargo in good order, perils of the sea and some other exceptions, and, notwithstanding this engagement, they failed to deliver it in good order, but through the neglect of the master and the unseaworthiness of the vessel, it became damaged in the amount of eleven thousand odd dollars.

The answer admits the delivery of the cargo to the vessel under the bills of lading as set forth in the libel; admits the delivery of the cargo to the libelant in San Francisco in a damaged condition, but denies that it was through negligence, and sets up as an excuse perils of the sea.

Of course, our prima facie case is made out by the libel and the answer as they stand of record. The facts, as we think they will appear to your Honor, are that the vessel, at the time of setting sail from Antwerp, was laden with a cargo of cement, a very heavy and compact cargo, and too much cement was placed in the lower hold. Being naturally a stiff vessel, she was so stiff as to become unseaworthy, so that when she got to sea, the action of the rolling threw her back into a vertical position with such great force that when she came off of Cape Horn she opened her decks and suffered other great damage through straining, and let large quantities of water through the decks and upon the cargo.

It will also appear that previous to arriving off the Horn, the master found it necessary to shift some of his cargo from the lower hold up higher in the lower hold—he raised it. After remaining off of Cape Horn for some time in this condition, he finally concluded that he would come around the other way by Cape of Good Hope and via Sydney. Knowing that his decks were in this condition, and that his vessel was very much damaged and injured at this time, he undertook a voyage of several thousand miles across the ocean, when within 60 miles of the point where he then was a port where he could have made full repairs.

Our answer to the suggestion that this damage was due to a peril of the sea, is twofold: In the first place, that the vessel was unseaworthy, and the damage is the result of her unseaworthiness. In the second place, that the damage was largely augmented by the failure of the master to take proper care in the custody of the cargo by putting into port, which was 60 miles off, and make his repairs, instead of going two or three thousand miles to do the same work. That will practically be our case.

Mr. PAGE.—If the Court please, the defense to the case as outlined by Mr. Frank is, that the damage that was caused was caused by a peril of the sea. I doubt if, in all the history of this court, a record has ever been brought into it showing where a ship has been subjected to the trials and tribulations which this ship is shown to have undergone from the time that she struck the River Platte up to the time almost that she

reached a port in Australia as a port of distress. Her crew were battered to pieces. Her cook was washed out of his galley. The last sauce-pan in the galley was lost at the same time. Two boats were washed overboard. She experienced terrible weather. The bulwarks were twisted out of shape. The stanchions that fastened the deck to the between-deck beams were broken away so that the great steel beams were raised up out of their places and out of the ship—

Mr. FRANK (Interrupting).—Mr. Page, you do not understand that this is the time for an argument, do you?

Mr. PAGE.—No; I am presenting my defense. The cement-ways were cracked around the ship, the sails were carried away, the spanker boom was broken, and for thirty-six days there was hardly one hour when the gales were not raging furiously. During all this time all hands were almost all the time ready to jump to whatever was to be done, for the purpose of saving the vessel. The poop sail was spread to prevent the men being washed away, and in order to make it possible that these men might go forward, a ladder had to be stretched from the amidship-house to the mainmast over which they had to crawl. There were thirty-six days of continuous gales, at times of hurricane force, and at times the ship had to lay hove to so as not to have her masts wrenched out of her. For twenty days previous to these thirty-six days, she had undergone very severe weather. As a result of all this, her decks were strained, immense quantities of water poured into her

hold, the cement was saturated with water, thereby adding a large amount of weight to her. She settled down so deep in the water that the master on two occasions thought she would founder on them right then and there before morning came along. I think he jettisoned over four hundred tons of cargo, or over four hundred barrels of cement, I am not absolutely certain which. He had to shift his cargo for the purpose of letting the vessel lie a little more easily, and at the last minute, in order to be relieved from the position of bucking against the enormous seas that were striking her, he turned his ship to the eastward and undertook to make, by the Cape of Good Hope, some port in Australia. He put in at Sydney, New South Wales, where it took him forty-three days to make his ship seaworthy again. The steering gear had been carried away, sails had been carried away, rigging without end disappeared, two of his boats were washed off the decks, and, as I said, I doubt whether any record of this court discloses where such imminent peril has been brought to a ship. Only the bravery of the men and their ability to withstand a diminution of their number—as many as six or seven at a time being incapacitated—could bring a ship into safety out of such perils.

As far as the second defense is concerned, I need only say to your Honor that if it was a mistake on the part of the captain not to fight on until he reached the Falkland Island, to which Mr. Frank referred, that was a mistake he committed in the management of the ship, and under the Harter Act there could be no

liability for that. Under all the circumstances, I doubt very much whether it could be said that he even did make a mistake.

I offer the depositions of David Milne, Edward Lawson, James F. Faraday, and Robert Johnston, master, 2d mate, sailmaker, and carpenter of the ship. The 1st mate was not in San Francisco. He left the ship in Australia and consequently we could not get his testimony.

I also offer the testimony of Leopold Haazen, a witness examined by the libelant in this case, in Antwerp, in reference to the stowage of the ship.

I also offer the evidence of D M. Abts, a witness examined by the claimant in Antwerp, in reference to the stowage of the ship. That is our case.

Mr. FRANK.—I think under the circumstances, as I have to call witnesses to rebut this testimony, both for their information and the information of the Court, this testimony should be read so, as we go along, we will know exactly what the case is.

Mr. PAGE.—Before I finish I ask permission to offer also the log-book of the ship on her voyage, which, it was stipulated, should be used by either side in so far as they might deem it necessary in the course of the trial, as the evidence of the captain. It is referred to in the deposition of the captain, and by stipulation is contained in the deposition.

The COURT.—So far as I am concerned, I do not desire to have the depositions read. Of course, if counsel

is not able to proceed without their being read, I suppose they will have to be read. I will read them all myself again.

Mr. PAGE.—The first deposition is that of David Milne. It reads as follows:

(Mr. Page here proceeded with the reading of the deposition of David Milne until a certain point was reached, when the following occurred.)

The COURT.—Mr. Page, I did not understand that all these depositions were to be read. I understood counsel to refer to depositions taken in a foreign country, the depositions of two witnesses. I have to read all these depositions myself, and it is simply a waste of time reading them here. I understood counsel to say it was necessary he should know something about the contents of a couple of depositions.

Mr. PAGE.—I understood Mr. Frank to mean all the depositions.

Mr. FRANK.—Yes, I did.

The COURT.—I think it is really a waste of my time.

Mr. FRANK.—Very well, your Honor, but I thought it necessary for the purpose of examination of witnesses in rebuttal.

The COURT.—If you are familiar with the depositions, you know how to question the witnesses. I have to read them all myself, anyhow. I cannot carry them in my mind as they are read to me.

(Deposition of David Milne.)

Mr. FRANK.—Very well, your Honor. In the first place, it is stipulated that all the facilities necessary for effecting the repair of injuries to the “Musselerag” occasioned by her voyage, could have been had at Fort Stanley on the Falkland Islands. Is that right, Mr. Page?

Mr. PAGE.—I gave you a written stipulation, and I suppose you are reading it.

Mr. FRANK.—Yes, that is it. If you wish, I will file it as a part of the record.

Depositions of David Milne, Edward Lawson, James Faraday, and Robert Johnston, taken on behalf of claimant before George E. Morse, United States Commissioner for the Northern District of California, at San Francisco, on July 10th, 1900.

DAVID MILNE, called for the claimants, sworn.

Mr. PAGE.—Q. State your name, age, residence, and occupation.

A. My name is David Milne; age, 50; residence, Montrose, Forfarshire, Scotland; occupation, carpenter.

Q. How long have you been with the “Musselcrag”?

A. Two years last March—in the beginning of March.

Q. In what capacity? A. Carpenter.

Q. What was the last voyage she made before this voyage to San Francisco?

A. From Liverpool to Sydney, and Sydney to Valparaiso, with coal. Then we went down to Iquiqui, and loaded nitre for Antwerp.

(Deposition of David Milne.)

Q. Were you with the ship at the time that she discharged in Antwerp? A. No, sir.

Q. You were not?

A. No, sir; but I was nearly four weeks aboard of her after I came up from home. I went home after we arrived there, and then joined her again.

Q. When were the ship's decks calked last before the voyage from Antwerp?

A. The last voyage, do you mean?

Q. When were they last calked before the present voyage?

A. In Valparaiso and Iquiqui, the two ports together. We were there a considerable time discharging and loading.

Q. Who did the calking there? A. Me, sir.

Q. Yourself? A. Yes, sir.

Q. Is it customary to get calkers there from shore, or does the carpenter do it? A. No, sir.

Q. The carpenter does it? A. Yes, sir.

Q. To what extent did you calk the decks?

A. I put a thread of oakum into all the seams, all over, fore and aft.

Q. After that what was her condition with reference to calking? A. Good.

Q. How long have you been calking ships as part of your business?

A. I served my time. We do all the calking where I belong to—the building of ships, and calking, and everything.

(Deposition of David Milne.)

Q. How long have you been calking?

A. About thirty years, nearly; that anyway.

Q. You say you joined the ship before she left Antwerp. Before you left the ship, did you do anything for the purpose of finding out whether her decks were all right?

A. Before we left?

Q. Yes.

A. Yes, sir; I went down nearly every morning after the decks were wet down in the morning.

Q. Looking for what?

A. For leaks.

Q. To see if any water got through from the wetting of the decks?

A. Yes, sir.

Q. Did you find any?

A. No, sir.

Q. Do you remember, after you got somewhere down towards Cape Horn, finding there was any leak of any kind in the deck?

A. There were some weeps in the deck forward.

Q. Where was that about—in the fore hold?

A. Yes, sir; in the fore hold.

Q. What do you call “weeps”?

A. Just a drop now and again from the seam.

Q. What did you do for that?

A. I calked the seams that I saw were weeping.

Q. Did you do anything else besides the calking?

A. No, sir; I went along underneath the deck as far as I could get, to see if there was any more, but I could not find any.

(Deposition of David Milne.)

Q. When you say you calked the seams where there was some weeping, what did you do? What was the thing you did in order to protect them?

A. I set the seams down and put a thread of oakum into them, and paid them with pitch.

Q. After you had done that, what was their condition? A. Good, then.

Q. Is it a usual or an unusual thing on a voyage to find that some of the seams weep?

A. Yes, sir; it is a very common occurrence.

Q. Is it your business to look after them—is it the carpenter's business?

A. Yes, sir; it is my business to look after them.

Q. Before you got to Cape Horn, or in the neighborhood of Cape Horn, what sort of weather did you have?

A. We had very fine weather until we got up near Cape Horn; not out of the way; a strong breeze; nothing out of the way.

Q. After you got in the neighborhood of Cape Horn, how was the weather?

A. Very bad weather nothing but gales of wind.

Q. And how long did that kind of weather last?

A. I could not say.

Q. Was it a matter of a day, or a matter of a month, or what? A. Each gale, do you mean?

Q. The bad weather.

A. About six weeks; nothing but gales of wind all the time.

(Deposition of David Milne.)

Q. With reference to there being hard gales of wind, or what?

A. Very hard; as hard as ever I experienced.

Q. Did anything happen to your ship during these gales?

A. Yes, sir.

Q. What happened?

A. We lost two of our boats.

Q. How did you lose those?

A. They were washed overboard.

Q. Struck by the sea?

A. Yes, sir.

Q. Any of your sails carry away?

A. Yes, sir; we lost a lot of good sails, too, new.

Q. Was the cement in any way injured in these gales?

A. Yes, sir.

Q. What happened to the cement?

A. When the decks commenced to leak, they opened out, and you could see the seams nearly, some of them, not all of them; one here and another there, right along the decks.

Q. How was the cement along the water-way?

A. Wet.

Q. Was it cracked in any way? Do you remember whether the cement was cracked near the water-way?

A. On deck?

Q. Yes.

A. It was cracked in the way of the stanchions.

Q. What happened to the bulwarks?

A. The starboard ones were all stove in, and the port ones also. We had to get them repaired in Sydney.

(Deposition of David Milne.)

Q. Where the bulwarks gave way, state whether or not water could get in.

A. Where the fastenings of the stanchions got through the plates.

Q. Could water get in there? A. Yes, sir.

Q. After you arrived in San Francisco, and were able to get down below, and the cargo had been discharged, did you find that anything had happened to any part of the deck or the deck beams?

A. Yes, sir; a lot of rivets in the stanchions were gone. I think nine stanchions in the between-decks and ten in the lower hold, where the rivets were all gone.

Q. What effect had that on the deck?

A. It would have a little. It must, because it is the support of the deck.

Q. Would it strengthen the deck, or weaken it?

A. It would weaken the deck, certainly.

Q. Was anything found with reference to the deck beams near the foremast, or to the deck itself?

A. Yes, sir; the one before the foremast, the stanchion as gone from the between-deck beam, that is, the stanchion before the fore-mast.

Q. What effect had that?

A. The deck rose up.

Q. It raised the deck, did it? A. Yes, sir.

Q. What effect had all this damage upon the resistance of the deck, so as it affected the seams?

A. The stanchion being gone, that would allow the deck to warp.

(Deposition of David Milne.)

Q. What would the seams do?

A. They would open.

Q. Was there any time during the voyage when your ship was not under sail and making way?

A. Yes, sir; we were hove to nearly all the time off Cape Horn, without any sail on her at all.

Q. Did you round the Horn after all?

A. Did we get round?

Q. Yes.

A. Yes, sir; we could not get round.

Q. What hapened to you? How did you get here?

A. We went round east by Australia, in a fair way. You can get round that way, but it is a long passage, of course.

Q. Are you expecting to go with your vessel to-morrow? A. Yes, sir.

Cross-examination.

Mr. FRANK.—Q. Do you remember what date it was that you got off the Horn?

A. The last of September or beginning of October.

Q. You said upon your direct examination that you found the decks weeping, and began calking them. Do you remember where you were at that time?

A. We were not far from the Horn. I don't remember exactly. I did not keep no log.

Q. Did you do that more than one time?

A. No, sir.

(Deposition of David Milne.)

Q. Then the entry in the log-book of September 18th, "Carpenter calking main deck," is the occasion that you refer to? A. I suppose so.

Q. You were then in latitude 39.12 and longitude 52.15. Do you know anything about that?

A. Yes, sir.

Q. That is the only occasion upon which you calked the decks upon the passage?

A. No, sir; I was two or three times at them, but that was only put down in the log once.

Q. You were two or three times at them?

A. Yes, sir.

Q. Before this time that is put down in the log, or after?

A. It might have been after. It might have been a day or two. I did it as soon as I got a chance to do it. I was at it two or three times.

Q. Might it have been before this date, September 18th?

A. No, sir; that was the first time I was at them.

Q. Up to that time you had experienced no bad weather?

A. Not particularly. We had strong breezes of wind, but nothing out of the way.

Q. How had the ship acted up to that time—did she roll heavily?

A. Yes, sir; pretty heavy, but nothing particularly with the cargo she had in.

Q. Why do you say "nothing particularly with the

(Deposition of David Milne.)

cargo she had in"? Did the nature of her cargo cause her to roll?

A. Yes, sir. Cement is a very bad cargo for a vessel to roll with.

Q. It is a heavy cargo and low down in the ship?

A. No, sir; it was high enough up in the ship.

Q. It was high enough up in the ship?

A. Yes, sir.

Q. Then why did that cause it to roll?

A. I don't know.

Q. Do you mean to say she had no cement in her lower hold?

A. There was plenty of cement in the lower hold and plenty in the between-decks.

Q. She was chuck full in the lower hold, was she not?

A. No, sir.

Q. How near full was she?

A. It tapered away down from the foremast, down forward.

Q. Did she have all she could carry in her lower hold?

A. Yes, sir, what they liked to put into her, I suppose.

Q. Could she have carried any more in her lower hold?

A. Oh, yes, she could have carried more.

Q. The first real bad weather that you experienced was what you got off the Horn, was it not?

A. Yes, sir.

Q. During this time that you were off the Horn, did you go down and examine the deck from beneath?

A. Yes, sir.

(Deposition of David Milne.)

Q. Now, you say that the deck was raised?

A. After the first breeze that we had, I went down—I went fore and aft—and a good many of the seams were weeping then.

Q. After the first breeze? A. Yes, sir.

Q. I suppose the body of the storm came on after that?

A. The first breeze was as heavy as what we had after.

Q. How long after the first breeze struck you was it that you went down and found the decks weeping?

A. The next day.

Q. Very considerably?

A. Not a great deal then, but they had commenced.

Q. How long did it take them before they opened into the condition you say they were in?

A. There was about a week that I could not go down at all. I could not get down. When I went down again, they were worse.

Q. Then, as you say, some of them were so open that you could see through them; is that it?

A. Oh, no, you could not see through them but you could see the seams cracked in the deck. You could see the pitch cracked in the seams.

Q. When was it that the deck hove up in the center?

A. We had not much time to take notice of it then in the bad weather. It was after we got out of it that we noticed it.

Q. After you got out of the bad weather?

A. Yes, sir.

(Deposition of David Milne.)

Q. How long was that after you turned back?

A. I could not say exactly. It must have been some time, because we had some heavy weather after we did turn back, a strong breeze.

Q. You had some heavy weather between Cape Horn and Sydney? A. Yes, sir, all the way, nearly.

Q. All the way, nearly? A. Yes, sir.

Q. Decks full of water, I suppose?

A. Yes, sir, decks full of water.

Q. During that time, you had no opportunity to repair the decks?

A. No, sir, you could not do nothing.

Q. What was it that you said about the bulwarks being broken in? A. They were broken off the Horn.

Q. To any very great extent?

A. They were all bent in. There was one plate that we had to take off in Sydney.

Q. Did that have any tendency to cause the vessel to leak?

A. The fastening of the stanchions, that is, the support for the bulwarks, the water went through there.

Q. I presume you had nothing to do with going and examining the cargo yourself, did you?

A. Yes, sir, I did.

Q. You found it saturated and wet?

A. Yes, sir.

Q. Before you left Cape Horn? A. Yes, sir.

Q. What can you say with reference to the quantity

(Deposition of David Milne.)

of water that was coming down at that time—great or otherwise? A. There was a good deal going down.

Q. What did you stop at Sydney for?

A. To get repaired.

Q. That is, to repair these damages that you had off of Cape Horn? A. Yes, sir.

Q. Were they of such a nature that you could not make the repairs on the voyage?

A. No, sir, you could not do it.

Q. I suppose you became aware of that fact when you were off Cape Horn? A. Yes, sir.

Q. That they were of such a nature that you could not repair them on the voyage?

A. No, sir, unless you put into port.

Q. If your decks were in good condition when you left Antwerp, how is it that they began weeping before you reached Cape Horn?

A. I suppose coming through the tropics. It is a general occurrence with a good many vessels that some of the seams weep a little, after you get through that very hot weather.

Q. Had not your vessel strained any before that?

A. No, sir.

Q. She had not? A. No, sir.

Q. Are you positive of that? A. Yes, sir.

Q. I suppose you had nothing to do with the stowing of the cargo? A. With the stowing of it?

Q. Yes. A. No, sir.

(Deposition of David Milne.)

Q. You know nothing about that? A. No, sir.

Q. Your business is simply that of carpenter?

A. Yes, sir.

Q. I notice that on August 2d you were engaged in calking the poop deck? A. Yes, sir.

Q. That was before you reached the tropics, was it not? A. Yes, sir.

Q. What was the trouble with that?

A. Our poop was puttied before, and all the putty broke out, and we took what remained then, set it down, and puttied it afresh.

Q. When did you first become aware that the deck had raised in the center? A. After we kept her away.

Q. About how long after?

A. I could not say; perhaps a week or a fortnight.

Q. How long did it take you to run from Cape Horn to Sydney? A. I don't remember.

Q. You do not know?

A. No, sir, I don't remember now; somewhere about two months, I think.

Redirect Examination.

Mr. PAGE.—Q. Is there any cargo under the poop deck?

A. No, sir.

Q. About what month was it that you did the calking at Iquiqui and Valparaiso?

A. In the latter end of October, November and December.

(Deposition of David Milne.)

Q. How long does calking usually last on board a vessel, when you calk the decks all over?

A. It ought to last two years, anyway.

Q. When you say you calked in October, November and December, was that on the voyage to Antwerp?

A. No, sir; in Valparaiso and Iquiqui.

Q. Was that just before the voyage that ended at Antwerp? A. Yes, sir.

Q. When you took the nitre on board? A. Yes, sir.

Q. So that it was in December, 1899? A. 1898.

EDWARD LAWSON, called for the claimants, sworn.

Mr. PAGE.—Q. What is your name, age, residence and occupation?

A. My name is Edward Lawson; age, 40; residence, London; occupation, sailmaker.

Q. Were you the sailmaker on board the "Musselcrag" on her voyage from Antwerp to San Francisco?

A. Yes, sir.

Q. How long have you been going to sea?

A. Since 1880.

Q. How many times have you been around Cape Horn?

A. Somewhere about twenty times; about that.

Q. Was the sail equipment of the "Musselcrag" in your charge? A. Yes, sir.

Q. What sort of sails had she?

A. First-class; the best she could have.

Q. What sort of a voyage had you until you got toward off Cape Horn? A. Before we got there?

(Deposition of Edward Lawson.)

Q. Yes.

A. Fine weather all the time.

Q. After you got in the neighborhood of Cape Horn, what sort of weather did you have? A. Very rough.

Q. What was the nature of the weather when you say it was rough?

A. Blowing very hard; the hardest ever I saw down there.

Q. How long did these gales last? Was it continuous bad weather, or one spell and then another spell?

A. It continued all the time after we got down. It continued for about five or six weeks, or more, sometimes harder than others.

Q. During this time of hard weather, what was the effect on your ship with reference to the amount of water she would take on board, for instance?

A. She took an enormous quantity.

Q. How long at a time would her decks be submerged with water?

A. For weeks she was half full of water on the decks.

Q. Where did the men stand during these times?

A. The watch on deck was generally on the poop.

Q. Had they precautions there to prevent being washed off?

A. Yes, sir; a heavy weather cloth in the rigging you could stand under.

Q. Anything else—life-lines? A. Life-lines.

Q. During this time, how were your sails affected?

(Deposition of Edward Lawson.)

A. On one occasion we blew one topsail away; a lower topsail; a heavy storm sail, and a few days after that we blew all the storm sails we had bent away in a very few minutes.

Q. What did your vessel have to do?

A. We could set no sail. We had no sail to set at the time, so we were lying under bare poles and pouring oil through the water-closets.

Q. What was the object of pouring oil out through the water-closets? A. To smooth the water.

Q. Did it have any effect?

A. Yes, sir, great effect.

Q. How was the wind blowing that night; was it blowing hard or not?

A. Blowing very hard, I should say from the north-west.

Q. How was your ship lying with reference to the sea?

A. She was right in the trough of it all night.

Q. Had you any control over the vessel? Could you bring her up at all? A. No, sir.

Q. How often during that voyage off Cape Horn were you obliged to heave to?

A. We were laying to mostly all the time.

Q. How did that voyage compare, with reference to bad weather, with reference to your previous experience round the Horn? A. It was a long way the worst.

Q. How did the ship behave in the seas?

A. She behaved pretty good until she took a lot of

(Deposition of Edward Lawson.)

water in, then she got heavy, and seemed to be getting heavier in the water all the time.

Q. Could you tell whether she had settled at all?

A. We thought so, at any rate.

Q. Anything happen to your boats during this time?

A. We lost two boats one night.

Q. How did they go?

A. The sea struck her and took them out.

Q. Anything happen to your bulwarks?

A. Yes, sir, the bulwarks were bent in on both sides.

Q. How were your stanchions affected along the bulwarks?

A. They were all loosened. They were all taken out in Sydney afterward.

Q. Did you get round the Horn after all?

A. No, sir.

Q. What did you do?

A. We had to steer east and make for the Cape of Good Hope.

Q. In your judgment, during this time, was there any danger of the ship foundering?

A. Yes, sir, there was one night.

Q. What night was that?

A. The night that we had the sails blown away.

Q. Do you expect to go with her on her present voyage?

A. From here?

Q. Yes. A. Yes.

Q. From this port? A. Yes, sir.

Mr. FRANK.—No cross-examination.

JAMES FARADAY, called for the claimants, sworn.

Mr. PAGE.—Q. What is your name, age, residence and occupation?

A. My name is James Faraday; age, 22; I live in Waterford, South of Ireland; occupation, seaman.

Q. Are you at present second mate of the “Musselcrag”?

A. Yes, sir.

Q. When did you join the ship?

A. About twelve months ago the first of July.

Q. Where?

A. Antwerp.

Q. You made the voyage from Antwerp to San Francisco in her?

A. Yes, sir.

Q. Was the vessel loaded when you came on board?

A. No, sir, she was loading.

Q. While she was loading, did you make any examination of the vessel or her decks, or anything of that kind?

A. I had a look all around.

Q. What condition did you find her in?

A. Very good condition, as far as my judgment went.

Q. What sort of a voyage did you have after you left Antwerp until you got to the region of Cape Horn?

A. Very fair until we got down there.

Q. How did the ship behave on that part of the voyage?

A. Coming to the Horn?

Q. Yes.

A. Very fair; pretty good.

Q. What sort of weather did you have after you struck that region of the Horn?

A. Awful bad weather.

Q. What was the effect on the ship?

(Deposition of James Faraday.)

A. She shipped a lot of water and was laboring about very heavily. We lost a lot of sails, ropes and other things.

Q. How long did that bad weather last?

A. I don't know exactly; about a couple of months; all the time we were down there.

Q. How much water did you ship?

A. I don't know. We shipped a lot of water. We were shipping tons of water nearly all the time.

Q. Decks nearly always full all the time?

A. Very near.

Q. Did it affect the ability of the crew to move about on the vessel's decks?

A. Yes, sir, they could not move around at times—for hours at times.

Q. During that time where was the crew?

A. The watch below would sometimes be in the fore-castle. Sometimes all hands would be on the poop on deck, standing by. They could not get around the decks until some of the water got off.

Q. Why would both watches be on deck at the same time?

A. They were not on deck all the time; they would be on deck shortening sail and getting things straightened up that were washed overboard, ropes overboard, and lashing gear down, and taking in sail.

Q. What prevented the ordinary watch on deck from doing those things? Why did you have to have both watches?

(Deposition of James Faraday.)

A. The weather was too bad. It took all hands all the time to do the work, sometimes. Of course, both watches were not on deck all the time. Nearly every day they were at times.

Q. You say sometimes both watches would be on the poop? A. Yes, sir.

Q. What precautions had to be taken at that time to prevent accidents to the men?

A. We had life lines stretched all around the deck, poop and main deck. We had ladders stretched from the after house that you could walk from the poop to, and from there along the mainmast, so as to get along part of the way without going on the deck at all.

Q. How would you get along these ladders—walking or crawling?

A. Crawling along the best way we could.

Q. Hanging on to the rungs?

A. Crawling along on top.

Q. Did you have any cover on the poop back of the masts of any kind?

A. Yes, sir, we had weather cloths up there; canvas lashed to the rigging.

Q. What was the object of those?

A. You would be frozen with the cold, if they were not there, it was so cold, and it would break the seas, and they would not nearly sweep us away if they struck them.

Q. To what extent during these two months that

(Deposition of James Faraday.)

you speak of, off Cape Horn, was the ship compelled to lay to?

A. She was laying to nearly all the time.

Q. Head to the sea, or in the trough of the sea?

A. The sea was beyond the bow sometimes.

Q. How were your sails affected during this time?

A. Nearly all blown away. Several of them were blown at different times.

Q. That is, the sail you could carry in that kind of weather?

A. Yes, sir, everything was blown away at times. We had had no sail at all whatever.

Q. At that time, how was your ship lying?

A. Laying to, like. We had canvas stretched in the mizzen rigging to keep her from falling off into the trough of the sea altogether.

Q. Were you ever under bare poles?

A. Yes, sir.

Q. What was the reason that you were lying under bare poles?

A. The wind blew all the sails away. We could not get a chance. We could not get any sails bent during those gales.

Q. When was this—at night or daytime?

A. In both night and day.

Q. At any time was there, in your judgment, any danger of the ship foundering?

A. Yes, sir, three or four different times I thought she would founder, the sea was so bad.

(Deposition of James Faraday.)

Q. Did you finally get round the Horn?

A. No, sir, we had to put back in the latter end.

Q. Why did you go back?

A. Because we could not get round.

Q. Then you made for Australia?

A. Yes, sir.

Q. After you turned to the eastward, was there an immediate change in the weather, or did the weather still continue bad for a while?

A. Continued bad for some time, but not so bad as off the Horn.

Q. Any damage done to your boats?

A. Yes, sir, we lost two boats down there off the Horn.

Q. How were they carried away?

A. I don't know. They went in the night time. We did not see them in the morning. I did not see them go myself. The watch on deck saw them go. They were completely swept away. There was no trace of them in the morning.

Q. How many boats did that leave you?

A. That left us two.

Q. How were your bulwarks affected, if they were affected at all?

A. They were twisted, bent.

Q. One side, or both? A. Both sides.

Q. How were the stanchions that hold the bulwarks?

A. They were started, too. They were not broke.

(Deposition of James Faraday.)

The stanchions down below were broken. They were bust from the beams.

Q. That is the stanchions that hold the deck beams up? A. Yes, sir.

Q. That you found out in San Francisco?

A. I seen some of them in Sydney, and the rest of them in San Francisco.

Q. How long have you been going to sea?

A. Six years the middle of this month.

Q. How many times have you been around Cape Horn? A. Four times before that.

Q. As compared with your former experiences, how was this weather?

A. It was twice as bad as any time I have been around there. I never saw such bad weather before.

Q. Are you expecting to return with the ship on her present voyage? A. Yes, sir.

Cross-examination.

Mr. FRANK.—The ship was pretty stiff, was she not? A. Pretty fair.

Q. Did she roll very heavily?

A. Yes, sir, she rolled something very bad.

Q. And strained very hard? A. Yes, sir.

Q. She rolled and strained before you got down to Cape Horn?

A. No, sir, she was all right until we got down there.

(Deposition of James Faraday.)

Q. Did she not roll and strain any before you got to Cape Horn?

A. Not a great lot, no, sir; she was all right, like any ordinary ship.

Q. I find an entry in the log on September 29th, "Find seams in fore deck leaking, put on tar and oil on seams through straining." Do you remember anything about that?

A. We had several gales, not very hard. Of course, she rolled and strained several times, but not very bad, like off the Horn.

Q. She rolled and strained sufficient to open her seams before she got around the Horn?

A. Yes, sir, before she got down there. There was oil and something else put on her seams.

Q. That came from her straining and rolling?

A. Yes, sir.

Q. Did you go below at all to examine the cargo?

A. When?

Q. During the voyage?

A. Yes, sir, I was down below at the time we were off the Horn.

Q. What did you find in reference to the water coming through? Was it coming through in large quantities?

A. Yes, sir, I found the decks very damp and wet. I found water in a boat that was down there.

Q. What you call a punt?

A. Yes, sir, when we were down off the Horn.

(Deposition of James Faraday.)

Q. Did you find considerable water in that boat?

A. There was some in it, not a great lot.

Q. Enough to attract attention?

A. Yes, sir, the decks were wet, and the top of the cargo of cement was damp.

Q. Was the cargo wet enough to cause the vessel to sink deep in the water?

A. Yes, sir, I should think it was.

Q. What did you go down there for? You said you went down to take out cargo?

A. Yes, sir.

Q. What did you do that for?

A. To lighten the vessel up.

Q. What did you do that for?

A. Because her decks were open at that time, and she was taking a lot of water and was getting down. There was water in the boat.

Q. By "getting down," do you mean that the ship was settling down deeper into the water?

A. Yes, sir.

Q. On account of the large quantities of water she was taking in?

A. Yes, sir.

Q. Did you go down to take out cargo?

A. I went down to have a look around, to see how things were down there.

Q. Before you got to the Horn, you went down and shifted the cargo, did you not?

A. Yes, sir, the cargo was shifted once. Some cases were shifted from the fore hold up into the between-decks.

(Deposition of James Faraday.)

Q. How far were you down when you did that?

Mr. PAGE.—Down where?

Mr. FRANK.—Down towards the Horn.

A. When we shifted the cases?

Q. When you shifted the cargo.

A. How far were we down?

Q. How far south were you? How many days out were you? A. I don't know.

Q. Some time before you got to the Horn?

A. Yes, sir, that is the time we shifted the cases of bottles, to make clear way for the cement.

Q. That is, you took the cement out of the lower hold and brought it up between decks?

A. No, sir, we took the cement out of the lower hold and threw it overboard.

Q. Before that, you shifted the cargo, before you got to the Horn?

A. No, sir, we did not shift any cement until we got to the Horn.

Q. Are you sure of that?

A. I am not right sure.

Q. You are not sure of it? A. No, sir.

Q. I find an entry here on September 18th, "Hands securing cargo loose fore and between-decks." Do you remember that?

A. Yes, sir; there were cases of bottles that we lashed down there. I don't remember the date.

(Deposition of James Faraday.)

Q. What was the matter with them—how did they get loose?

A. I don't know exactly about loose. We lashed them to the stanchions. We secured them better than they were.

Q. I presume the seas off Cape Horn were not continuous? You would have a storm, and then it would calm down, and afterwards another one would come up, I suppose?

A. They were like that for a good space, most of the time.

Mr. PAGE.—Q. Like what?

A. It would be stormy for a long time. We had one fine day down there, that is all, the day we got the cargo overboard.

Mr. FRANK.—Q. You had other days that were not so severe?

A. They were not quite so bad, but they were bad enough; very bad. There were sometimes, a few hours at a time when it was not so bad.

Q. I find here an entry on October 12th, "Hands employed shifting cargo from fore part of fore hold, and raising part into between decks, and shifting cement further aft and higher in the ship to ease the pitching and straining." Do you remember that?

A. Yes, sir, I remember that, but I don't remember the date.

Q. That was not bottles, was it? You did at that

(Deposition of James Faraday.)

time raise the cement higher in the ship in order to ease her pitching and straining?

A. Yes, sir, we shifted some aft in barrels at one time.

Q. And you also raised it higher in the ship?

A. Yes, sir, a tier higher.

Q. Did that ease the vessel any?

A. Yes, sir, I should think it did.

Q. She did not strain so hard after that?

A. Oh, she strained hard enough.

Q. It prevented her straining as hard as she had been before?

A. It may have had a little effect on her, that is, for one tier. I cannot say how many tiers up we raised it. We may have raised it several tiers.

Q. What do you mean by "One tier"?

A. One height of barrels.

Q. You don't know how many tiers you actually did raise it? A. No, sir.

Q. The object of raising it was to ease her on her straining? A. Yes, sir.

Q. I suppose you raised it as much as you could under the circumstances?

A. Yes, sir, I think we did. I don't think we could have raised it any more.

Redirect Examination.

Mr. PAGE.—Q. Do you remember at that time whether any cement was brought up from the lower

(Deposition of James Faraday.)

hold at all into the between-decks? Do you remember whether it was or not?

A. There was none brought up and shifted from the lower hold to the between-decks. I saw none. There was none done on my watch on deck.

Q. What was brought up from the lower hold?

A. Some cases of bottles were brought up from the fore lower hold and left in the between-decks.

Q. During any of this bad weather, were any of you laid up sick?

A. Yes, sir, I was laid up myself some time.

Q. What from?

A. A spar fell on me. The spanker boom carried away and struck me.

Q. Anybody else hurt?

A. Yes, sir, there was another man hurt at the time. He was hurt while shifting the ventilator. There were several others laid up at the time. Sometimes there were five or six laid up.

Q. At the same time? A. Yes, sir.

Q. From what?

A. Some got hurt around the decks. Some men got struck with seas, and were washed around the decks.

Recross-examination.

Mr. FRANK.—Q. How far were you off of Cape Horn during the time of this storm?

A. We were not very far off, because we sighted the

(Deposition of James Faraday.)

land several times. We sighted Staten Island and Diego Ramirez.

Q. On October 26th, I notice an entry in the log, among other things, "Weather bright and clear at noon, land in sight. Staten Island, after 31 days. Found cargo saturated with water through the excessive straining of the ship and decks." I will go back a little further and read: "Laboring, straining badly. Deck still flooded. Sea went down about midnight. In the morning took fore and aft hatches off." Then comes that about finding the cargo saturated, and so forth. Do you remember that occasion?

A. What occasion?

Q. When you took off the hatches, and that the weather was bright and clear at noon, and you found the cargo saturated with water, and you sighted Staten Island, on October 26th?

A. I think that must have been the day we went down and took the cargo and threw it overboard.

Q. That is the day before you went down, according to the entry here.

A. I was not down that day myself.

Q. That was about the time you turned about and made for Sydney, was it not?

A. Yes, sir, that is before we made for Sydney.

Q. About the day before? A. No, sir.

Q. How long before you came about?

A. Some time after that. I don't know when it was.

(Deposition of James Faraday.)

Q. That was about five or six days before you started for Sydney?

A. Yes, sir, it may have been that. I know it was some time.

Q. On October 30th, I notice another entry: "Westerly gale, heavy seas at times, rolling and straining heavy, flooding the decks. High land in sight to northward." Do you know what land that was?

A. No, sir.

Q. It must have been about Cape Horn, must it not?

A. The land off Cape Horn or Staten Island.

Q. You had not made any headway one way or the other?

A. No, sir; we were drifting.

Q. November 4th I notice an entry, "Decided to run east by Cape of Good Hope." Do you know if that was the time that you decided to turn about?

A. I don't remember the date. I remember the day, though.

ROBERT JOHNSTON, called for the claimants, sworn.

Mr. PAGE.—Q. What is your name, age, residence, and occupation?

A. My name is Robert Johnston; age, 47; residence, Aberdeen; occupation, master mariner.

Q. What is your present occupation—of what ship are you the master?

A. Master of the bark "Musselcrag."

Q. How long have you been a master?

(Deposition of Robert Johnston.)

A. For 20 years.

Q. In command of large ships all the time?

A. Yes, sir.

Q. When did you join the "Musselcrag"?

A. In Antwerp, about twelve months ago.

Q. Previous to her starting on the voyage for San Francisco? A. Yes, sir.

Q. Which has just been terminated?

A. Yes, sir.

Q. Before leaving Antwerp on this voyage, what was done towards preparing the ship; what did you do, in the first place?

A. I looked all over the ship, and satisfied myself that everything was in order; found everything in very good order.

Q. What is the ship's registered tonnage?

A. 1871.

Q. What is her carrying capacity?

A. About 3,364 tons we have in now.

Q. Of wheat? A. Yes, sir.

Q. Any lumber besides that?

A. Yes, sir; there is a good deal of lumber there; lumber for the lining.

Q. Have you any idea how many tons that would be?

A. About 25 tons, I suppose.

Q. What was done with reference to preparing the ship before she left Antwerp?

A. The ship was all thoroughly cleaned out, her limbers lifted, scantling taken down.

(Deposition of Robert Johnston.)

Q. Her ceiling? A. Yes, sir.

Q. Sparring? A. Yes, sir.

Q. Where does that come?

A. The sparring runs along between the frames of the ship, fore and aft, and also up and down the between-decks.

Q. What was done then?

A. The ship was thoroughly cleaned and painted inside.

Q. Painted outside? A. Yes, sir.

Q. Where was she when all this was being done?

A. At Anwerp, in the drydock.

Q. Do you know how old that ship is?

A. About four years now.

Q. How long were you by the ship while the cargo was being taken aboard? A. About a month.

Q. In stowing the cargo, was any precaution—and if so, what precaution—taken for the purpose of making an allowance for a heavy, deadweight cargo?

A. Yes, sir; the cargo was raised from the sixth tier, up.

Q. Will you explain what the difference is between raising a cargo in the hold, as you say, and not raising it?

A. If we did not raise it, the barrels would be stowed bilage and cuntling. When you raise the cargo, you put inch pieces of board over the sixth tier, which would raise the next tier, and so on.

(Deposition of Robert Johnston.)

Q. That is, when you begin raising at the sixth tier, do you lay the same scantling between each successive tier? A. Yes, sir.

Q. Up to the beams? A. Yes, sir.

Q. What effect would that have in diminishing the occupied space in the hold?

A. I should say by nearly a barrel when it got to the between-decks.

Q. That is, the diameter of a barrel?

A. Yes, sir.

Q. Ordinarily, in stowing cargoes at Antwerp, where is this raising begun? A. At the eighth tier.

Q. In the case of your ship, why did you begin at the sixth tier?

A. I think the owners wished to keep the ship as lively as possible. The ship was naturally a beamy ship and a stiff ship.

Q. What do you mean by a "beamy" ship?

A. A large beam.

Q. Was the lower hold full?

A. There was room for another cask between the beams. The ends of her were empty.

Q. Were the between-decks full up to the beams?

A. There was room for another tier.

Q. How much did you have in the lower hold in weight? A. About 2,350.

Q. How much did you have in the between-decks?

(Deposition of Robert Johnston.)

A. We had 928 tons in the between-decks, as near as I could guess.

Q. Under whose superintendence was the cargo loaded? A. Under mine.

Q. In your judgment as a ship master, was that cargo properly stowed? A. Yes, sir.

Q. With reference to the ship's carrying capacity, was the cargo a small cargo, or a large cargo, or a suitable cargo, or what?

A. A suitable cargo. The ship was loaded to her marks.

Q. When you say she was loaded to her "marks," what do you mean? A. Light water draught.

Q. At the time that the ship was loaded, where was she laying? A. In the Scheldt, fresh water.

Q. The effect of leaving the fresh water and going into the salt water would be what on raising or lowering those marks?

A. It would raise it six inches.

Q. She would be lying six inches out of the water after leaving the fresh water, than she was at that time?

A. Yes, sir, six inches more freeboard.

Q. In your judgment, what was the condition of the vessel then with referenece to seaworthiness?

A. Good condition; excellent condition.

Q. Do you remember what day you started from Antwerp on your voyage? A. The 19th of July.

Q. 1898? A. 1899.

Deposition of Robert Johnston.)

Q. Up to the time that you got near the Horn, what kind of weather had you, as a rule?

A. Fair weather. When we got down towards the Platte, we had the usual pretty heavy seas, but the weather was not excessive until we got to the Horn.

Q. Up to the time that you got to the Horn, how had the ship behaved? A. Behaved well.

Q. Is this ship a ship that carries sail equipment easily? A. Yes, sir, she is light sparred.

Q. At the time that you got as far as the Horn, what evidence had the ship given, if any, of being too stiff, or being too cranky?

Q. You had very bad weather, did you not, after that? A. Very bad.

Q. Taking your experience in your previous voyages, how did the weather compare during this voyage with the weather that you have seen on other occasions?

A. I never had seen such heavy weather off Cape Horn.

Q. Where is the first mate now? Is he still by the ship?

A. No, sir, the first mate left in Sydney, New South Wales.

Q. Who kept the ship's log? A. The first mate.

Q. Had you anything to do with it yourself?

A. Yes, sir, under my supervision.

Q. To what extent were the entries that he made your entries, or entries that you supervised?

(Deposition of Robert Johnston.)

A. We always discussed the entries to be made in the log.

Q. Each day? A. Yes, sir, each day.

Q. State whether or not you examined the log as he made the entries?

A. I got the log for my examination generally every second day; never less.

Q. Did you sign the log yourself? A. Yes, sir.

Q. Where the log is signed on successive days, when was the signature made?

A. That would be the day he presented it—that is, each successive day.

Q. Now, will you be good enough to give a history of the voyage, beginning at the time that the first bad weather showed itself. Begin far back enough to be able to give the whole history of the voyage, using the log as much as you can.

A. On September 17th there is the following entry in the log-book: "Fresh breezes, with head sea. Ship under topsails and mainsail. 4 P. M., more moderate"—

Mr. FRANK.—I do not know that you can introduce the log in that way.

Mr. PAGE.—Q. Look it over, Captain, and tell what happened upon that day, that is, of interest.

A. We had heavy seas and heavy squalls. The ship was rolling heavily.

(Deposition of Robert Johnston.)

Mr. FRANK.—I think I prefer that you read the log, Captain. Go back and read it.

(It is stipulated that the log may be introduced in evidence, and read by either of the parties. The log is marked "Exhibit A.")

Mr. PAGE.—Q. The entries as they appear in that log, you say, were the true entries of the facts as they occurred at the time? A. Yes, sir.

Q. How long did the bad weather continue? When did it begin?

A. We had 36 days of it off Cape Horn.

Q. When did it begin?

A. About the 25th of September, 1899, we commenced to have bad weather. We rounded St. John's light on the 27th. The bad weather continued until the 4th of November, when we squared away and run to the eastward.

Q. Why did you run to the eastward?

A. The ship seemed to becoming more laborsome, and the bad weather continuing, we thought we had damaged ourselves sufficiently, and so run to the eastward to save further damage.

Q. Had you the object in view of seeking a port?

A. No, sir.

Q. After the first bad weather, did you make any investigation to find out whether any harm had been done to the ship, or whether she was leaking, or anything of that kind?

(Deposition of Robert Johnston.)

A. Yes, sir. We always kept the pumps sounded, and made a careful examination around the decks.

Q. Did you lift the hatches?

A. Yes, sir, we lifted the hatches at the very first opportunity.

Q. Do you remember when that was?

A. The 29th of September.

Q. What did you find then?

A. We found some of the seams weeping in the fore part of the deck.

Q. Had you then had any bad weather?

A. Yes, sir; the decks were not weeping to any great extent.

Q. Is that the time that the carpenter spoke of, when he made some repairs to the seams?

A. Yes, sir, the carpenter attended to the seams. We put tar and oil on the decks, which helped them a little.

Q. What was the nature of the damage that occurred during the time that you were off Cape Horn? State from your recollection now what happened to the ship.

A. We lost a spanker boom; smashed the wheel and steering gear boxes; lost two boats, three topsails, two mizzen staysails; twisted the bulwarks on both sides; started the bulwark stanchions on both sides, cracking the cement around them. We also lost a considerable amount of running gear, blocks, etc. All the galley furnishings were washed completely out of the galley, and the cement in the galley flooring was disturbed and broken. I think that is the principal damage.

(Deposition of Robert Johnston.)

Q. What effect had it on the decks themselves?

A. The decks were strained, of course.

Q. When you say the decks were strained, what effect had that on the seams?

A. That opened the seams.

Q. Do you know whether any water got into the ship by reason of the cracking of the cement near the waterways and the fastenings of the stanchions loosening?

A. Yes, sir, you could trace the water down the ship's sides now. Captain Metcalf saw that when he was on the ship at the dock here.

Q. This water that went down through the decks and through the various holes that were made by reason of the injuries that the ship suffered, where did that bring up—in the bilge, or where?

A. No, sir, it was absorbed by the cement.

Q. At any time was there any great quantity of water in the bilges?

A. No, sir, never more than two inches in the well.

Q. Would the pumps suck at that?

A. No, sir, the pumps would not fetch at that.

Q. What effect had the absorption of the water by the cement on the weighted cargo that you were carrying?

A. I should say considerable.

Q. State how continuous these 36 days of gale were?

A. It was continuous bad weather; blowing almost with hurricane force at frequent intervals.

(Deposition of Robert Johnston.)

Q. Was your ship making way during the time, or laying to?

A. She would head reach a little at times, and then we had to heave her to again.

Q. What was the condition of the decks during these 36 days or so of the storms, with reference to the amount of water they were carrying?

A. They were getting worse. The more the ship strained, the more the decks strained.

Q. I mean with reference to the amount of water that the decks were carrying.

A. They were completely flooded.

Q. Would they be relieved at times, or would the flooding be continuous?

A. Almost a continuous flooding.

Q. Where would your crew be during these times?

A. The watch on deck always aft on the poop. That was the only safe place for them.

Q. Was the single watch sufficient always to do the work?

A. No sir, we had to have all hands out every now and again.

Q. For what purpose?

A. Getting the ship round and making and taking sail, to keep her steady in the sea way, as the wind increased or lulled.

Q. What precautions if any, were taken for the purpose of preventing accidents to the men?

(Deposition of Robert Johnston.)

A. We had life lines stretched fore and aft the decks and across the poop, weather cloths.

Q. Did you hear the mate say something about a ladder?

A. I had a ladder stretched from the amidship-house to the mainmast.

Q. For what purpose was that stretched?

A. To enable them to get fore and aft without going on the deck.

Q. Was that to prevent their being washed away?

A. To prevent their being washed away.

Q. How many of the men were hurt during these 36 days?

A. Four or five of them were down at a time, sometimes, all through accidents and injuries.

Q. When you say that you had four or five of them down, what did you mean?

A. Incapacitated; off duty. Not through liquor.

Q. How did the fresh water hold out?

A. The fresh water held out very well. At times we had a great difficulty in getting it up from below.

Q. How about food, and tea, and things of that kind?

A. We had to do without tea and coffee frequently.

Q. Why? A. Because we could not cook it.

Q. During this time, in your judgment, were there any occasions when there was any danger to your ship?

A. Yes, sir, I thought on one or two occasions that she would in all probability go away with us before morning.

(Deposition of Robert Johnston.)

Q. Go away with you in what direction?

A. Down.

Q. After having gone to the east where did you bring up next? A. Sydney, New South Wales.

Q. What did you do there?

A. Repaired the damages.

Q. Why did you go into Sydney, New South Wales?

A. I should have been short of provisions if I had gone further and taken much longer time. I lost some provisions during the bad weather, as stated in the log.

Q. You put in there as a port of distress?

A. As a port of distress. Our steering gear carried away just after we passed through Bass Straits.

Q. Where is that?

A. That is between Van Diemen's Land and Victoria.

Q. What caused it to carry away?

A. Heavy weather.

Q. At what time?

A. It had evidently been carried away off the Horn, although we did not know it. We brought her to the wind one night, expecting a shift from the northwest. There was a nasty sea running, and the steering gear carried away.

Q. What made you then think that the steering gear had previously been weakened off Cape Horn?

A. We could see that. One-half of the pin had been broken previously.

Q. You had not been aware of that fact until then?

A. No, sir.

(Deposition of Robert Johnston.)

Q. How long were you at Sydney?

A. Forty-three days.

Q. Engaged in what during that time?

A. Making repairs.

Q. Did you find at Sydney anything else that was to be repaired, excepting what you have already given us as the damages?

A. I found that she had raised her beams alongside the foremast, and parted the stanchions from the between-deck beams.

Q. What was the nature of the repairs that you made at Sydney?

A. These beams were set back to their original position; the stanchions re-fastened and the decks calked; the stanchions and the water-ways re-fastened, and the bulwarks set back into their places; new boats, and two lower topsails, and two mizzen staysails; the steering gear was also repaired, and the wheel and the decks were calked fore and aft. The cement in the galley that was broke out was replaced. The stove was repaired, and other general repairs made.

Q. Were these repairs that were made in Sydney, all incident to the weather that you had had at Cape Horn?

A. Yes, sir.

Q. At that time the cargo was not broken out, as I understand?

A. No, sir, it was a little disturbed, to get at the bottom of the stanchions in the lower hold.

(Deposition of Robert Johnston.)

Q. When you arrived at San Francisco, what further damage did you discover had been caused there?

A. We found nine stanchions in the between-decks loose at the head, and ten in the lower hold.

Q. What effect did that injury, at the time that it happened, have upon the stability of your decks?

A. It would leave the decks free to move. There is no doubt, their being carried away, increased the opening of the seams.

Q. Was there any other damage that you have not mentioned now that you discovered in San Francisco?

A. No, sir.

Q. Can you now recollect about what the cost in Sydney was of your repairs?

A. One thousand seven hundred pounds.

Q. Was your stay in Sydney prolonged beyond the time that it was necessary to make these repairs?

A. Not beyond the contractor's time?

Mr. FRANK.—What is the object of this?

Mr. PAGE.—That we did not dilly-dally on the voyage.

Q. Your stay there was not prolonged beyond what was necessary for the repairs? A. No, sir.

Q. What is the total length of that entire voyage, from Antwerp to San Francisco?

A. Three hundred and thirteen days.

Q. Nearly eleven months? A. Yes, sir.

(Deposition of Robert Johnston.)

Q. And the usual voyage, taking one with another, is what?

A. One hundred and forty, I presume; that would be about it.

Q. About one hundred and forty days?

A. Yes, sir.

Q. To go back to the serious times around Cape Horn: What effect, so far as you then knew, did the amount of water that was reaching the cement have upon the ship herself, with reference to lifting or settling her in the water?

A. The ship appeared to labor more heavily than she had done, and I thought that she must be settling a little.

Q. Thereupon what did you conceive it proper to do?

A. I jettisoned some of the cargo, after consulting with the officers and petty officers.

Q. About how much did you jettison?

A. From four hundred and forty to four hundred and fifty barrels of cement. I could not be exactly sure of the number. The second mate tallied them, but he is not quite sure.

Q. During that period of time, was your cook injured?

A. Yes, sir, the cook was laid up for a while.

Q. How was he injured?

A. Washed out of the galley with the furnishings.

Q. Did he take the stove with him?

(Deposition of Robert Johnston.)

A. No, sir, that was the only thing that remained. He cooked in oil tins from the Horn to Sydney.

Q. Why was that?

A. All the utensils were gone

Q. Have you any idea about how many of your crew were incapacitated at different times during these 36 days of hard weather?

A. From two to four, and sometimes five of them were laid up.

Q. At a time? A. Yes, sir.

Q. Taking the whole crew through, have you any idea about how many of them did, at one time or another, have to lay up?

A. I should say six or seven. They are all logged.

Q. Was your second mate amongst them?

A. My second mate was amongst them.

Q. And any of the other officers?

A. No, sir, I think not.

Q. How many mates do you carry?

A. Three. Two certificated officers.

Q. You are expecting to go to sea to-morrow, Captain? A. Yes, sir, as soon as possible.

Cross-examination.

Mr. FRANK.—Q. When you jettisoned that cargo, did you take out the most wet cement?

A. We took the cement from immediately underneath the hatch. We had not much option—that which was handiest.

(Deposition of Robert Johnston.)

Q. Did you notice whether it was damaged?

A. Oh, yes, it was wet.

Q. On your way from Cape Horn to Sydney, I presume you had your decks more or less covered with water?

A. Yes, sir, we had an exceptionally heavy passage alone.

Q. Did you examine on that trip to see whether water was coming through into your ship, or were you satisfied that it was coming in?

A. No, sir; we examined her closely. She did not appear to be making as much water through the decks as she had been.

Q. Still, she was making considerable?

A. A little; not much. We were running before it.

Q. Her decks were open?

A. Her decks were open, but the ship was not laboring so much. She was running easy.

Q. I notice considerable entries of her laboring

A. Yes, sir, but not so much as she was off the Horn.

Q. How much she was taking, you do not know?

A. No, sir.

Q. This cracked condition of the cement, what would that indicate to you with reference to the working of the sides of the vessel?

A. It indicated, in all probability, that the stanchions were started; that there had been a movement.

Q. You noticed that while you were off the Horn, did you not? A. Yes, sir.

(Deposition of Robert Johnston.)

Q. I suppose the question of whether a vessel is loaded down to her marks or not has nothing in itself to do with her stiffness or otherwise? That depends upon the nature of her cargo, and the manner in which she is stowed, does it not? A. Quite so.

Q. A vessel may not be laden down to her marks by considerable degree, and yet be a very stiff ship?

A. Yes, sir.

Q. Was the "Musselcrag" a vessel of deep hold?

A. Pretty fair depth of hold.

Q. What is the depth of her lower hold?

A. I could not tell you exactly that.

Q. You do not know?

A. No, sir, not without reference to the register.

Q. Do you know the depth of her between-decks?

A. No, sir; I should say eight feet. Eight or nine feet, I suppose, the between-decks are.

Q. Do you know her draught?

A. Yes, sir, her draught of water.

Q. What was her draught upon this occasion?

A. 21 forward, and 21.9 aft, when we arrived in Sydney.

Q. Do you know what her freeboard was?

A. Two inches free of her center bar.

Q. That would give her how much freeboard?

A. 5.3, I should say.

Q. How high was her bulwarks?

A. That has nothing to do with her freeboard.

(Deposition of Robert Johnston.)

Q. That would give her about 27 or 28 feet depth of hold? A. Yes, sir.

Q. Did you have much of this cement in the between-decks?

A. About 928 tons of cargo in the between-decks. I think there were about 102 of general cargo altogether.

Q. I believe you testified you had 2,350 in her lower hold? A. About that.

Q. Is the ship naturally a stiff ship, do you know?

A. Yes, sir, I should say she was naturally a stiff ship.

Q. Unusually so?

A. No, sir, not unusually so; not for a ship of her class and construction, up-to-date vessel.

Q. Do you know where you were, by consulting your log, on the 17th day of September?

A. 39.34 south; 52.01 west.

Q. On November 4th where were you?

A. 56.34 south; 60.34 west.

Q. About how far is that from Staten Island?

A. South of Staten Island; not very far.

Q. About how far? Within sight of the Island, is it not? A. It is not far from the Island.

Q. It is not far from Staten Island?

A. No, sir.

Q. It was about 60 miles from Staten Island at that time when you turned about? A. Yes, sir.

Q. Why did you have all these repairs made in Sydney, when you say you only went in there for provisions?

(Deposition of Robert Johnston.)

A. I went in there for provisions and repairs. I went in in distress.

Q. When you said, in answer to your direct interrogatory, that you went in for provisions, you did not mean to say that was the only reason?

A. No, sir; I would have to go in to attend to my steering gear. That would have put me into Sydney.

Q. Is that all?

A. No, sir, I went in for general repairs.

Q. You conceived that it was necessary to have your ship repaired before you went further on your voyage?

A. Yes, sir.

Q. Why was that?

A. I did not know what sort of weather I might encounter coming across the Pacific.

Q. Did you expect to encounter worse weather coming across the Pacific than you encountered running into Sydney? A. I might have done.

Q. It was not reasonably to be expected?

A. It was not unreasonable to expect it.

Q. Ordinarily you would not have expected any worse weather than you had?

A. No, sir, not ordinarily.

Q. Still, you thought it was necessary to repair?

A. Yes, sir.

Q. What did you do to your decks at Sydney?

A. Had the beams put back into their place, and the decks calked.

(Deposition of Robert Johnston.)

Q. Any other repairs?

A. I mentioned the repairs in Sydney.

Q. Have you mentioned them all?

A. Most of them. All the particular repairs.

Q. At Antwerp was the vessel laden under the superintendence of a stevedore? A. Yes, sir.

Q. Who was the stevedore?

A. I could not tell you his name; I do not remember it.

Q. You do not remember it? A. No, sir.

Q. Do you know the name of the firm?

A. August Bulcke & Co's. stevedores.

Q. Who were they? What were they to the ship?

A. They are the agents for Messrs. Spreckels.

Q. Did they attend to the loading of the ship?

A. Their stevedore was the man who stowed the ship.

Q. How do you know they are the agents of Spreckels?

A. They are the shippers for Spreckels.

Q. Have you any information upon that subject, or are you only assuming it? You have no direct information, have you? A. No, sir, not upon that point.

Redirect Examination.

Mr. PAGE.—Q. After beginning to make your easterly course, were you in a condition to be able to do anything towards improving your decks?

A. No, sir, not as I had anticipated. I anticipated

(Deposition of Robert Johnston.)

we would have better weather as we run along, and that I would be enabled to do something to the decks; but we had exceptionally severe weather for that time of the year; the hardest weather that ever I experienced running down east to Australia, and I have run down there for the last twenty years or twenty-five years.

Q. What is the proportion of wheat that you are carrying now in your lower hold and that of your between-decks?

Mr. FRANK.—I object to the question as immaterial.

A. We have no between-decks in the ship now.

Mr. PAGE.—Q. Were the stevedores at Antwerp employed by you? A. Yes, sir.

Q. And who selected them?

A. They were selected at the suggestion of the charterer's agent.

Q. Who were the ship's charterers?

A. McFarland and McCrindle.

Q. Under the usual provisions of the charter-party?

A. Under the usual provisions of the charter-party.

Q. They selected these people, and you accepted them as being proper people? A. Yes, sir.

Q. But the stowage was done under your superintendence? A. Yes, sir.

Q. Also provided by the charter-party?

A. Yes, sir.

[Endorsed]: Filed Jul. 18, 1900. Geo. E. Morse, Clerk. By John Fouga, Deputy Clerk.

Deposition of ALPHONSE DAVID MARIE ABTS, taken on behalf of the claimant, on commission, before Geo. F. Lincoln, Consul-General Commissioner, at Antwerp, Belgium, on July 24, 1902.

Direct Interrogatories.

1. Please state your name, age, residence and occupation.

A. Alphonse Abts; age, 52; Antwerp; stevedore.

2. If you say in answer to the foregoing interrogatory that you are a stevedore, state how long you have been in such business and at what city, and the name of your firm, if you have a firm.

A. Have been a stevedore since 1870 at Antwerp. My present firm name is Abts & Co.

3. Please state whether your experience as a stevedore has included the loading of ships for California. If yea, for how long a time? .

A. Yes, since 1898.

4. Do you remember having had the loading of the British Ship "Musselcrag" at Antwerp about June or July, 1899? A. Yes.

5. If yea, please state what class of cargo she was loaded.

A. Cement and general cargo—not much general cargo.

6. What knowledge had you of the method in which she was loaded, that is, as to the character and quantity of cargo which was placed in different parts of the vessel? A. I do not know.

(Deposition of Alphonse David Marie Abts.)

7. Was such loading done under the general superintendence of any person; if so, under whose superintendence was it done?

A. Under that of the captain and chief officer.

8. Did you personally have anything to do with the loading or supervision of the loading of the "Musselcrag"?

A. I did not personally direct the detail of the work but looked after the stowage, blocking up the cargo and dunnaging.

9. If you know the way in which the ship was loaded, please state whether or not in your opinion she was properly loaded for the voyage from Antwerp to California.

A. As far as I can recollect after three years I think this ship was properly loaded and in the usual conditions.

10. In your opinion, as she was loaded, was the ship seaworthy or unseaworthy?

A. In my opinion, yes.

Cross-interrogatories.

1. If, in your answer to the sixth interrogatory, you shall state that you know the method in which said vessel was loaded, as relates to the character and quantity of cargo which was placed in the different parts of the vessel, give the number of tons of cargo, and kind of cargo that was stowed in the lower hold of said ves-

(Deposition of Alphonse David Marie Abts.)

sel, and with which she departed upon her voyage from Antwerp to San Francisco, in July, 1899.

A. I do not know.

2. Give the number of tons of cargo, and the nature of the cargo that was stowed in the between-decks of said vessel, and with which she departed upon her voyage from Antwerp to the port of San Francisco in the month of July, 1899?

A. It is impossible to say.

3. State whether or not you have any stowage plan of said vessel showing the number of tons of cargo placed in the lower hold, and the number of tons of cargo placed in the between-decks, and their position. If you have such stowage plan, produce the same and have it attached to this deposition, and marked Exhibit "A."

A. I have no plan, but a copy of a plan was communicated to me four or five weeks ago by Messrs. Auguste Bulcke & Co.

4. If you shall produce such stowage plan, state whether or not it truly and accurately sets forth the number of barrels of cement and other cargo contained in the lower hold of said vessel on the 17th day of July, 1899, for the voyage from Antwerp to San Francisco, and state whether or not such stowage plan accurately sets forth the number of barrels of cement and the number of bags of sulphur, and number of cases of other cargo contained in the between-decks of said vessel at said time and for the said voyage.

(Deposition of Alphonse David Marie Abts.)

A. After a lapse of three years it is impossible for me to say if this plan is correct or not.

5. State whether or not said vessel left said port of Antwerp for a voyage to the port of San Francisco with the cargo named in said stowage plan and stowed as in said stowage plan indicated?

A. I do not know.

6. If you shall say that you did not personally have anything to do with the loading or supervision of the loading of the said vessel, then state by what means you secured the information regarding the manner in which she was loaded, and whether or not it is from any records or data that you have in your office and regularly kept by you in the course of your business.

A. By personal observation in accordance with my reply to the direct interrogatory.

7. Did you ever see the "Musselcrag" before?

A. No.

8. Do you know whether or not she is naturally a stiff or cranky ship?

A. I do not know, I have never been to sea in her.

ALPHONSE ABTS.

Deposition of LEOPOLD HAAZEN, taken on behalf of libelant, on commission, before Geo. F. Lincoln, Consul-General Commissioner, at Antwerp, Belgium, on April 24, 1902.

(Deposition of Leopold Haazen.)

Direct Interrogatories.

1. State your name, age and occupation.

A. Leopold Haazen; 32 years of age; laborer.

2. Were you foreman stevedore for Alph. Abts & Sons at Antwerp in the month of July, 1899?

A. No.

3. If, in answer to the last interrogatory, you shall say that you were such foreman stevedore, state whether or not during the month of July, 1899, you acted as such foreman stevedore in the loading of the bark "Musselcrag" at Antwerp?

A. I was employed as a laborer.

4. If, in answer to the last interrogatory, you shall say that you did act as such foreman stevedore in the loading of the bark "Musselcrag" in the month of July, 1899, give the number of tons of cargo and kind of cargo that was stowed in the lower hold of said vessel when when she departed from Antwerp in July, 1899, upon her voyage to the port of San Francisco.

A. As a workman I had no knowledge of it and had no means of information.

5. State how many tons of cargo, and the nature of the cargo, that was stowed in the between-decks of said vessel upon her voyage from Antwerp to the port of San Francisco, beginning in July, 1899.

A. It ws cement, but I do not know the quantity.

6. State whether or not you have any stowage plan of said vessel showing the number of tons of cargo placed in the lower hold, and the number of tons placed

(Deposition of Leopold Haazen.)

in the between-decks, and their position. If you have such stowage plan, produce the same, and have it attached to this deposition marked Exhibit "A."

A. I have no plan.

7. If you shall produce such stowage plan, state whether or not it truly and accurately sets forth the number of barrels of cement and other cargo placed in the lower hold of said vessel on the 17th day of July, 1899, for the voyage from Antwerp to San Francisco, and state whether or not such stowage plan accurately sets forth the number of barrels of cement and the number of bags of sulphur, and the number of cases of other cargo placed in the between-decks of said vessel at the said time and for the said voyage.

A. I have no such plan.

8. State whether or not said vessel left the port of Antwerp for a voyage to the port of San Francisco with the cargo named in said stowage plan, and stowed as in said plan indicated. (Nathan H. Frank, Attorney for Libelants.)

A. I do not know.

Cross-interrogatories.

1. How long have you been foreman stevedore in your present or any other employ?

A. I never was foreman with anyone.

2. In your experience as foreman have you been engaged in loading ships with cargoes of the class to which

(Deposition of Leopold Haazen.)

that of the "Musselerag" belonged? If yea, to what extent have you been so engaged?

A. I never was foreman.

3. If, in answer to the fourth direct interrogatory you shall have given the number of tons and the nature of the cargo therein asked about, state whether you gave such answer from your independent recollection of the facts or from some plan or memorandum presented to you? A. I know nothing of it.

4. If, from some memorandum or plan, state what that plan or memorandum is. State further whether the plan or memorandum was made by yourself. State further when it was made. A. I don't know.

5. If you shall have stated that the memorandum or plan was made by yourself, state whether the same was made at the time the ship was stowed, or at a later period. A. I never made a plan.

6. State whether such memorandum or plan was made from your personal observation entirely, or in whole or in part from reports made to you by other persons. A. I made no plan.

7. State whether you personally counted the barrels which are stated on such plan to have been placed in the different parts of the "Musselcrag's" hold and between-decks. A. I did not count them.

8. Has it been your custom as foreman stevedore to make a plan of the stowage of every ship which you loaded for San Francisco at the time the cargo was being stowed or immediately after the cargo was stowed?

(Deposition of Leopold Haazen.)

A. I was not foreman.

9. If it has been your custom so to do, has it also been your custom to insert the number of barrels or cases stowed in each part of the ship which holds cargo?

A. No.

10. How often, previous to the loading of the "Musselcrag," had you made a plan of the stowage, giving the quantity of cargo stowed at each of the different points? Give the names of the ships.

A. I made no such plan.

11. Was it not your duty as foreman stevedore of the ship to exercise your best judgment to make good stowage of the cargo of the "Musselcrag" for the voyage to San Francisco?

A. As far as I know it was well stowed, but I was not foreman.

12. Was not the stowage of the ship in your actual charge as foreman stevedore? A. No.

13. Was the cargo of the "Musselcrag" stowed with regard to division of weights in the lower hold and between-decks, in the manner customary with ships loading at Antwerp, sailing for San Francisco?

A. I do not know.

14. Was not the cargo of the "Musselcrag" properly stowed in your opinion with regard to the division of weight between the lower hold and between-decks?

A. As to weights I can say nothing, but the stowage was well done.

(Deposition of Leopold Haazen.)

15. Did you at any time make any report to the master of the "Musselcrag" that there was too much cargo in the lower hold and too little in the between-decks? A. I did not.

16. If you made a plan of the stowage, did you furnish the master of the "Musselcrag" with a copy of it? A. I made no plan.

17. If you made such plan, did you at any time submit the plan for his inspection? A. I made none.

18. How much empty space was left in the lower hold when the "Musselcrag" was laden at Antwerp and in what parts of the ship were such spaces?

A. It is difficult to say after three years.

19. How much empty space was left in the between-decks of the "Musselcrag" and in what parts of the ship were such spaces?

A. It is difficult to say after a lapse of three years.

Redirect Interrogatories.

1. If, in answer to the fourth cross-interrogatory you shall state that the said plan or memorandum therein inquired of, was not made by yourself, state whether or not it was made under your direction and supervision.

A. No.

2. State whether or not you furnished to the person who did make said plan or memorandum, the number of tons and kinds of cargo stowed in the lower hold, and the number of tons and kinds of cargo stowed in the between-lecks. A. No.

(Deposition of Leopold Haazen.)

3. State whether or not at the time of stowing the cargo of said vessel you were advised or knew that the said ship "Musselcrag" was a stiff ship.

A. I do not know.

4. State, if you remember, where the master of said ship was during the lading of said cargo.

A. The captain came on board every day.

5. State what, if any, opportunity the master of said vessel had during the lading of said cargo to ascertain the number of tons in her between-decks and the number of tons in her lower hold.

A. The captain had the opportunity by referring to the checker's notes.

LEOPOLD HAAZEN.

[Endorsed]: Published and filed by order of court this 2d July, 1902. Geo. E. Morse, Clerk. By John Fouga, Deputy Clerk.

JOHN BURKE, called for the libelant, in rebuttal, sworn.

Mr. FRANK.—Q. Mr. Burke, what is your business?

A. Foreman stevedore.

Q. How long have you been engaged in that business?

A. Eighteen years.

Q. In whose employ were you during that time?

A. Stewart Menzies & Company's.

Q. Do you remember the ship "Musselcrag" when she came into this harbor in June or July, 1900, with a damaged cargo of cement?

A. Yes, sir.

(Deposition of John Burke.)

Q. Were you engaged at that time in the discharge of that cargo? A. Yes, sir.

Q. What did her cargo consist of?

A. It consisted of 100 tons of general merchandise, and the rest cement.

Q. Do you remember how that cargo of cement was stowed in the lower hold with reference to whether it was stowed bilge and cuntline or raised?

A. It was set bilge and cuntline, raised on the bottom, I suppose about a foot from the bottom of the ship.

Q. I mean so far as the cargo itself is concerned, was it set solid?

A. A solid bulk of cement; from the between-decks down there were a few boards scattered along the main hatch, and barrels were set on top of them, but from there aft to both ends of the ship, there was nothing but cement, and it was set bilge and cuntline.

Q. Did those boards have any tendency to raise the heads of the barrels so as to increase the liveliness of the ship?

A. No, sir, I don't think so. The fourth tier below the between-decks was where the boards were.

Q. What was the size of the boards?

A. Old pieces of lining boards that they line ships with, perhaps 1 by 10 or 1 by 12, and perhaps 20 feet long.

Q. Were those boards of sufficient strength to have ordinarily sustained the weight of three or four tiers of cement? A. I don't hardly think so.

(Deposition of John Burke.)

Q. Well, do you know?

A. I think it is too much weight for an inch board to stand four tiers of cement.

Q. What is the weight of a barrel of cement?

A. Four hundred pounds, on an average.

Q. So four tiers of it would be about 1600 pounds?

A. Yes, sir.

Q. From what you saw of that cargo, could you tell whether or not it had been originally tiered up or raised from the sixth tier?

A. No, sir, nothing raised that I saw. I think those few boards were on top of the sixth tier.

Q. What would that indicate to you? Could you tell from your experience whether it had been originally raised, or whether it had been set solid?

A. I could not tell whether they set it that way or threw those boards there. They were not all the way from the hatch that way; they were just in the body of the ship in the main hatch.

Q. None of those boards were found anywhere except around the main hatch?

A. Around the main hatch; that is all I could find.

Q. And how were the barrels stowed away there? Were they stowed as if they had been raised, or bilge and cuntline?

A. They were set on those boards, and over those boards they were set bilge and cuntline again above.

Q. What was the area of the main hatch compared with the spread of the cargo?

(Deposition of John Burke.)

A. About the size of the hatch, you mean?

Q. Yes.

A. I could not exactly say. It might have been four beams in length, and it might have been about 12 or 14 feet wide, and it might have been 16 feet long in the main hatch.

Q. And it was stowed in what points?

A. Stowed from the bulkhead forward to the foremast two tier high, and from the foremast half barrel shingle to the between-decks shingle from behind the mizzenmast to the between-decks below the mizzenmast in the lower hold. Nothing outside of cement but a few crates of bottles and barrels of pulverized sulphur in the lower hold among the cement.

Q. And in that cargo there was no indication of any raising of the cargo except in this square around the main hatch?

A. That is all that I know.

Q. If it had been there, would you have seen it?

A. I would, because I was looking down there all the time. I blowed a whistle for the engineer to go ahead; I have to look down to see that the load is slung right.

Q. Do you remember anything about whether the ship was a naturally stiff ship or not?

Mr. PAGE.—If your Honor please, I do not know how the witness would be capable of testifying to that.

Mr. FRANK.—We will find out whether he is capable.

Mr. PAGE.—Ask him what his capacity is and what his opportunities are to know.

(Deposition of John Burke.)

Mr. FRANK.—Q. Did you see the ship go from here to Port Costa? A. No, sir, I did not see her going.

Q. Did you see her start? A. No, sir.

Q. Do you know whether or not she had any ballast in going from here to Port Costa?

A. Well, I did not put it in. I took all her cargo out of her before I left. The last thing I took out of the ship was a load of firewood the captain gave me. That was the last thing that came out of the ship; some dunnage wood.

Q. She was cleaned out when you left her?

A. Yes, sir, cleaned out, outside of the dunnage wood, old wood underneath the cargo.

Cross-examination.

Mr. PAGE.—Q. What is your place on deck when you superintend the discharge of the ship?

A. Hatch tender; I blow the whistle for the engineer to go ahead.

Q. Do your duties keep you all the time at that spot?

A. No, sir.

Q. Do you go down below? A. Yes, sir.

Q. What do you do down below?

A. Sometimes we have men not accustomed to work, and we show them what to do in the way of laying planks, and so on.

Q. Who attends to the engineer while you are down there?

A. I have a man, or else nobody attends to him.

(Deposition of John Burke.)

Q. Do you remember that you were down on that occasion to teach new hands?

A. Yes, sir, I was down several times.

Q. Do you remember you were down several times for that purpose, to teach new hands?

A. Not for that necessarily; sometimes you have to go down to see that the men are not playing you, that they are doing all the work.

Q. How long ago was it that the cargo was discharged from the "Musselcrag"?

A. I cannot tell you how long ago it was.

Q. Was it over four years ago?

A. It is two years, anyway.

Q. And during that time you have been discharging cargoes from ships?

A. Yes, sir.

Q. Cement cargoes?

A. Several times.

Q. Do you remember what was in each individual ship you have discharged during the last five years?

A. Not positively, no.

Q. When was your attention first called to the "Musselcrag" so as to note that there was anything different in her, or did you notice anything different?

A. Some ships do not have a general cargo; sometimes ships only have light stuff on board.

Q. But, so far as this cargo was concerned, it was the same as all ships that you have noticed that came with cargoes of cement?

A. Yes, sir, bilge and cuntline.

(Deposition of John Burke.)

Redirect Examination.

Mr. FRANK.—Q. Do you know anything about the different stability of ships? In loading ships, do some ships take cargo laden away down, and some another way, in order to make them stiff or lively?

A. Some ships require a good deal more weight in the lower hold than others. In putting in cargoes, you regulate the cargo in a certain way. The master stevedore generally tells us how much to put there, how much to go here and there, and so on.

Q. Why is it you remember so particularly concerning the "Musselcrag"?

A. Well, it happened we did not work very long on that ship; she was a two-hour-a-day shift. We put out more cement than ever was put out in San Francisco. There was a time when we put out twelve hundred and twenty-odd barrels from half past 7 to half past 9, and the whole city front was around to see the work done. The average work in most ships is 300 out of the lower hold, and 400 between-decks; but out of the "Musselcrag" I put between 500 and 600 out of between-decks and 400 or 450 out of the lower hold.

Q. Was anything said to you at that time about the danger of that cargo, or anything asked you concerning the manner in which the cargo was stowed?

A. No, sir.

Q. Do you not remember coming up to my office?

A. Oh, yes, once I was to your office with Mr. Menzies.

(Deposition of John Burke.)

Q. Have you been spoken to about it since?

A. No, sir, outside of Mr. Wilson speaking the other day for me to come up and see you.

Q. At the time you came to my office, did you make a statement of these conditions, of the condition of that cargo?

Mr. PAGE.—We object to that, your Honor, as immaterial.

Mr. FRANK.—I do not propose to call for the statement. I simply want to show there was something to fix this particular cargo in his mind.

Mr. PAGE.—He has already said so.

Mr. FRANK.—Q. Do you remember that?

A. Yes, I remember going to your office.

Recross-examination.

Mr. PAGE.—Q. You said that the master stevedore was the man who determined those things. In the case when a ship is stowed in a foreign port, the master stevedore determines the proper stowage there?

A. I do not know anything about any other port. This is the only port I ever worked in. I was born here.

Q. In this port, the question is always determined by the master stevedore who is loading the ship?

A. It has been with the people I have been working for.

F. G. WILSON, called for the libelant, in rebuttal, sworn.

Mr. FRANK.—Q. What is your business?

A. Stevedore.

Q. How long have you been in that business?

A. In San Francisco, do you mean?

Q. Yes, sir.

A. Twenty-one years.

Q. What, if any, firm have you been connected with during that time?

A. Stewart Menzies & Company.

Q. Were you connected with that firm at the time that the "Musselcrag" was discharged in this harbor, in June or July, 1900?

A. Yes, sir.

Q. Do you remember the ship?

A. Yes, sir; I was aboard of her lots of times.

Q. You had to do with her before?

A. We loaded her before; we discharged her ballast and loaded her before when she came from Shanghai a couple of years previously.

Q. Do you know what her build is in reference to being a beamy and stiff ship or a cranky ship?

A. She is a stiff vessel; a very stiff ship.

Q. From your experience in stevedoring, what would you say in reference to a vessel like the "Musselcrag," laden with cement, and carrying 2,350 tons of cement in her lower hold, and 928 in the between-decks—what would you say in reference to the seaworthiness of a vessel of the character of the "Musselcrag" with such a cargo?

(Deposition of F. G. Wilson.)

Mr. PAGE.—I object to the question on the ground that the witness is not shown to have any knowledge regarding the stowage of ships with cement. If there is any difference between cement and any other cargo, the witness is not shown to be a man who has been accustomed to load ships with cement, nor is he a man who is shown to have any connection with the carrying of such a cargo so as to make him competent to say that a particular ship will carry cement in a particular way, and another ship will carry a different amount of cement in another way.

The COURT.—Let us hear the answer, and you can draw that out on cross-examination.

A. From my experience as a sailor and an officer of a ship—I have never had anything to do with anything but ships for the past 33 or 34 years—I should say that she got about 150 or 200 tons more cement in the lower hold than she ought to have.

Mr. FRANK.—Q. What would be the result on the action of the vessel laden too heavily in the lower hold, as you have indicated?

A. In heavy weather, or head-reaching, she would roll to the windward very heavily and shake herself up.

Q. What do you mean by “shaking herself up”?

A. I mean she is liable to carry away her spars and her rigging, and furthermore she is bound to strain the decks more or less. She comes to the windward with a jerk.

(Deposition of F. G. Wilson.)

Q. You say she comes to the windward with a jerk?

A. Yes, sir.

Q. That is, she rights herself too quickly?

A. Rights herself too quickly, owing to the center of gravity being below water.

Q. And that has a tendency to open up her decks and to strain the vessel?

A. It has a tendency to do damage to a vessel, and especially in an iron vessel.

Q. Why more particularly in an iron vessel?

A. Because these modern steel ships are built different from the old-time iron ships.

Q. In what respect?

A. Inasmuch as they carry a bigger percentage over their registered tonnage, an iron ship weighs heavier and a steel ship weighs less.

Q. Do you remember what this vessel carried over her registered tonnage?

A. She carried somewhere in the neighborhood of 80%, if I recollect right. She is 1871 tons register, and she carried 3,360 tons of weight the last time we loaded her, and I think she carried 3,355 tons the time we loaded her before. But, of course, wheat is a different cargo altogether from cement.

Q. In what respect?

A. The weight is more distributed. In loading her with wheat, we might put two-thirds of the cargo in the lower hold, and the balance in between-decks; or one-third of the cargo in between-decks, and two-thirds

(Deposition of F. G. Wilson.)

in the lower hold, and it would be shingled down at both ends in the lower hold. With a cargo of cement that lies low in a vessel, there should be more dead weight between-decks so that the vessel would be easier at sea.

Q. That is, cement is more compact and lies dead at the bottom of the ship?

A. Yes, sir; lies closer together.

Q. Mr. Wilson, you stated that you had been connected with Stewart Menzies & Co. for a great number of years—I have forgotten how many years you said.

A. Twenty-one years.

Q. During that time, do you know what percentage of British vessels coming to the port of San Francisco were loaded and discharged by that firm?

A. Probably 75%.

Cross-examination.

Mr. PAGE.—Q. Were you ever a shipbuilder, Mr. Wilson? A. No, sir.

Q. Were you ever a master of a ship?

A. A small vessel, yes, sir.

Q. What kind of a vessel?

A. Master of a small bark for a short time.

Q. For how long?

A. About two and one-half months.

Q. Before that what did you do?

A. I was a Yokohama pilot for about three years.

Q. And before that?

(Deposition of F. G. Wilson.)

A. Mate and second mate; second mate on the coast here.

Q. What do you call the center of gravity in a ship?

A. I mean when there is too much dead weight in the lower hold, and then again the cement lies low between decks—that ship's between-decks, would be probably $7\frac{1}{2}$ or 8 feet, and if you take that cement and put it three or four tier, it lies very low.

Q. Have you ever loaded cement yourself on board ship?

A. No, sir, I have not loaded cement, but I have loaded lime here when I was on a ship.

Q. What kind of a ship did you load lime upon?

A. A wooden vessel.

Q. A small vessel?

A. Yes, sir, a vessel that would carry about 750 tons.

Q. You never have had any experience in the stevedoring business with reference to the loading of cement?

A. No, sir, but I have in the discharging of it.

Q. Where does most of the cement come from?

A. In years gone by, it used to come from England, and now it comes from Hamburg and Antwerp.

Q. Very large quantities come in every ship that comes from Antwerp? A. Yes, sir.

Q. You said a moment ago that the center of gravity would be below the water. Do you understand that there is a center of gravity which affects the stability of a ship? A. It would make her too stiff.

(Deposition of F. G. Wilson.)

Q. Do you understand that there is such a thing as the center of gravity?

A. No, sir. I am only a sailor; I am not college bred. I mean to say that here was too much cement in the lower hold, and not enough in between-decks, undoubtedly the vessel would roll to the windward quicker and be too stiff.

Q. What would be the first effect that would be shown in a ship if she was loaded too deep and was too stiff—would it not carry away her upper spars? Is not that the weakest point of her, if she is too stiff and rolls too heavily? Is not that the danger?

A. That is the danger in many cases, of ships losing their spars.

Q. That is the weak spot?

A. Yes, sir, that is the weak spot. And, in addition, of course, it is liable, with these iron ships, or steel ships rather, that they build now, they are liable to strain very heavily.

Q. All ships are liable to strain if they roll, are they not?

A. Yes, sir, but a steel ship is more liable to damage herself than a wooden ship.

Q. If she was rolled in a heavy sea?

A. Yes, sir.

Q. But the first point at which a vessel that was so stiff as to cause an extraordinary amount of rolling would feel the effect, would be in her spars. That is her natural spot, the weak spot in the ship, in that case?

(Deposition of F. G. Wilson.)

A. Well, that is a matter that you have to deliberate on.

Q. Do you not know anything about ships?

A. I know this much: Of course, that she will feel it in her spars.

Q. That is the place she will feel it first, is it not?

A. The spars in an iron ship, where they are practically all iron, there is more or less connection with the bulwarks; there is no give to anything like there would be in a wooden ship.

Q. And the result is that the spars are in danger all the time?

A. The spars are in danger all the time, and so are the bulwarks.

Q. And that is the point that is likely to be struck first? A. Yes, sir.

Q. Did you load this ship on the outside voyage, after she arrived here?

A. Do you mean did we load her going home?

Q. Yes? A. We loaded her twice.

Q. As a matter of fact, did she not carry a heavier cargo of wheat than was loaded upon her at Antwerp of cement? A. I think just about the same.

Q. It was at least the same amount in weight, was it not? A. About the same amount.

Q. You do not know that it was any more?

A. I do not suppose there was over 10 or 15 tons difference, unless what the ship jettisoned on the other

(Deposition of F. G. Wilson.)

side. Of course, I do not know anything about that. My books will show what she discharged here.

Q. You have been assuming all the time that the figures Mr. Frank gave you were correct—he gave you 2350 tons and 928 tons of cement.

Mr. FRANK.—No, he has not been assuming anything. I have given him a hypothetical question.

The WITNESS.—How much would that make all together?

Mr. PAGE.—Three thousand two hundred and seventy-eight tons, according to those figures that Mr. Frank gave you.

Q. Do you remember whether or not she carried a heavier cargo of wheat than 3,278 tons on her return?

A. We were paid for loading 3,360 tons and 3,355 tons.

Q. So she carried, according to those figures, they being correct, more going home than she had been loaded with?

A. Yes, sir, but it is a different kind of cargo. It is distributed all over the ship; whereas cement is not.

Redirect Examination.

Mr. FRANK.—Q. Mr. Wilson, in the first place, a high-sparred vessel, or a vessel with high masts, and a vessel with low masts would be differently affected by this falling and rolling, would it not?

(Deposition of F. G. Wilson.)

A. You mean the ship that carries royals and sky-sails, and a bald-headed vessel?

Q. Yes.

A. Well, I have never been on a bald-headed vessel, but I usually saw as a sailor that the bald-headed vessels that will have from 70 to 75 feet double topgallant yards will be more liable to damage herself like the "Musselcrag" was.

Q. You mean by "a bald-headed vessel," one without royals? A. Yes, sir.

Q. I am speaking now of the damage to the spars, first. The higher the spars, the more likely the spars are to receive the first damage? A. Yes, sir.

Q. How was the "Musselcrag" sparred? Was she a bald-headed vessel?

A. Yes, sir; bald-headed; nothing above her topgallant yard.

Q. In reference to the weight of a cargo that the vessel carries, that is, the number of tons of her total cargo, that is not a question that affects her rolling, is it? The relative number of tons that a vessel carries in one cargo, or another is not what affects her rolling, but it is the distribution of the cargo?

A. It is the distribution of the weight in the ship.

Q. That is, two cargoes of equal weight might be carried so distributed, the one that would cause her to be very stiff and jerk herself to pieces, and the other one being loaded higher up would make her lively and easy?

(Deposition of F. G. Wilson.)

A. I have loaded ships here that would carry three thousand odd tons, the same as that ship—and 3,500 tons—and there would be 3,000 tons in the lower hold, and only 500 in between decks, whereas a ship of the “Musselcrag” class would require more in between decks.

Q. Is there any difference with reference to cement or other cargoes, in the relative weight that the vessel should carry above her between-decks from that which she has below. Does it make any difference what kind of cargo a ship has, whether it be cement or something else, in regard to the number of tons that should be above between-decks and those in the lower hold?

A. Most certainly. For instance, if you load a cargo of nitre, the nitre can come within 2 feet or $2\frac{1}{2}$ feet of the ship's side, and it is built right up in her.

Q. That is because it is light?

A. It is to have the ship in proper stability.

Q. The weight has to be divided in a certain way?

A. Yes, sir.

Q. And it does not make any difference whether it is cement or not, that same relative division of weight will have to appear in the whole of the vessel?

A. Yes, sir; various cargoes have various ways of being stowed.

Q. That is, where they are compact and heavy—

A. (Interrupting.) They have to be built up accordingly.

Q. But, so far as the weight that they carry is con-

(Deposition of F. G. Wilson.)

cerned, it is immaterial whether it is a heavy weight, that is, in a small compass, or whether there is a light weight in a large compass; is that the idea?

A. For instance, you take wheat: That goes 46 cubic feet to the ton; you distribute it and shingle it up in both ends of the ship, and you have the lining of the ship six inches on the floor and nine inches on the turn of the bilge. Take a ship loading a full cargo of barley, with the permission of the surveyors they would lower down the dunnage, the lining, to two inches, so she would carry more cargo in her lower hold.

Q. That is because barley is lighter, and you want to get it lower down in the ship?

A. Yes, sir.

Q. You were asked whether all ships did not roll in a heavy sea.

Mr. PAGE.—I don't think I asked that question. I presume all ships do roll in a heavy sea.

Mr. FRANK.—Yes, I presume they do; all ships do roll in the sea, but the question of the stability of vessels has to do with their righting power, whether they right quickly or come up slowly.

A. Different ships act differently at sea. I have been in American wooden ships that, with the weight properly distributed, would go along and would not damage themselves at all; whereas, another ship would, in heavy weather, when headreaching, tear herself all to pieces.

Q. With the weights distributed properly?

(Deposition of F. G. Wilson.)

A. Even with the weight properly distributed; that is, to a certain extent, of course; jerking to the windward.

Recross-examination.

Mr. PAGE.—Q. All ships differ, to a greater or less extent, with reference to being cranky or with reference to being stiff? A. Yes, sir; all ships do.

Q. And the matter of loading a ship is generally left to the supervision of the captain for that reason, is it not; he is supposed to have the best judgment on that subject?

A. It all depends on the nature of the cargo. There are old stereotyped rules—

Q. (Interrupting.) There are general rules, I understand.

A. These rules are changing. When I went to sea 35 years ago, they used to stow wine or tallow or a wheat cargo in a ship's forehold. Now, if I was loading a cargo, I would put wine in between decks, simply because the modern ship is so large, and they carry such a heavy percentage over the registered tonnage, and according to the rules of stowing wine you are only allowed to have so many tiers, and if you put weight on top of that in the lower hold—take a ship with 17½ feet in the lower hold, and you put six tiers of wine there, you have to put something on top of it. If you put it between-decks, and stow it bilge and cunline, and then

(Deposition of F. G. Wilson.)

block it off with something else, there is no danger of any damage.

Q. That is not an answer to my question. You say different vessels vary according to size, and so forth; some are a little stiff and some are more tender. Who is the man to whose judgment it is generally left to determine how the ship will be loaded, so the line of tenderness will not be crossed or the line of stiffness will not be crossed? Is that the master or the master stevedore?

A. In all cases, the captain of the ship is supposed to supervise the loading of his ship.

Q. He is the man, who knows her condition from previous experience generally.

A. Generally speaking; but, of course, there are lots of ships we have loaded here, that the master would leave the matter entirely to the stevedore.

Q. The stevedore is a man who understands his business, as a rule? A. Yes, sir.

Q. And he attends to it?

A. There are lots of ships owned here that the captains are not here when the ships are loaded, and they have an overlooker, and the overlooker probably leaves it to the stevedore.

Q. But it is a matter of nice judgment whether you are crossing that line on one side or crossing it on the other in different ships?

A. It is a matter of practical knowledge of the cubic contents of the vessel.

(A recess was here taken until 2 o'clock P. M.)

Afternoon Session.

SAMUEL H. QUAYLE, called for the libelant, in rebuttal, sworn.

Mr. FRANK.—Q. What is your business?

A. Master mariner.

Q. How long have you been a master mariner?

A. Since 1884; 18 years.

Q. What is your present employment?

A. Captain of a sailing ship.

Q. What vessel? A. "Ellisland."

Q. What class of a vessel is that?

A. An iron ship.

Q. A British vessel? A. A British vessel.

Q. Have you made frequent trips around the Horn?

A. Yes, sir; some fifteen or sixteen times.

Q. Have you ever carried cargoes of cement?

A. Yes, sir.

Q. Do you know the ship "Musselcrag"?

A. I do not know it particularly, but I know her class of ship.

Q. It has been testified here by the master that she is a beamy ship and a naturally stiff ship, and that she had 2,350 tons of cement in her lower hold and 928 tons in her between-decks, on a voyage from Antwerp to San Francisco around the Horn, and that the vessel met with bad weather and rolled and strained violently. Now, with a vessel of that class and a cargo such as I have described to you, what would you say in regard to the vessel being seaworthy or not?

(Deposition of Samuel H. Quayle.)

A. She was too stiffly laden; it would make her labor-some.

Q. About what quantity do you think she should have had raised from her hold into her between-decks?

A. To load the ship with cement, she should have had from 62½ to 65% in her lower hold, and as the cargo was given to me, I figured it out that she had 71½% in her lower hold.

Q. In the stowing of the cargo in the lower hold, how should it be stowed—compact, or should it be raised so as to make spaces, interstices, between the barrels?

A. It is hardly possible to load by making the interstices between the barrels, but the cargo is raised by not putting it so far forward or so far aft, and brought up as high as it possibly can be in the middle of the ship.

Q. What would have been your idea, if the cargo had been brought up in the middle of the ship, only leaving one tier between that and the between-deck beams?

A. Well, it is the usual way of stowing the cement, but then we allow for that by putting less in the lower hold. It is according to the class of ship and according to her requirements for stowing, and with the style of ship of the "Musselcrag's" class, I should say that she should have no more than 64% in the lower hold.

Q. What would be the effect, Captain, of stowing too much dead cargo in the lower hold?

A. It would make the ship labor-some in a sea way, and strain herself.

(Deposition of Samuel H. Quayle.)

Q. In straining, what effect would that have upon the decks?

A. Opening the seams and making a leak.

Q. I show you now what purports to be the ship's log on the voyage here in question, and ask you whether you have ever seen it (handing)?

A. Yes, sir, I have seen this log-book.

Q. Did you make a careful examination of it with reference to this question?

A. Yes, sir, I went over it.

Q. What, if anything, can you say with reference to the weather described in that log-book as having been experienced off the Horn compared with the usual weather to be expected at that place?

A. I do not find anything in the log-book showing that the weather was anything unusual from what we experience down off the Horn. The Horn is a place that we have to provide against for extreme weather, and, in my judgment, looking over this log-book, I do not think there is anything in the log-book any more than I had there myself.

Q. Is there anything in the weather as described in that log-book that would warrant the condition of affairs which is described as having arisen on board of that vessel, providing she had been properly stowed?

Mr. PAGE.—That question calls for the opinion of the witness on matters that he cannot possibly know.

Mr. FRANK.—Why not?

(Deposition of Samuel H. Quayle.)

Mr. PAGE.—He is asked to look at a log-book, and then asked whether the condition of the weather would account for injuries to the ship of a certain kind or to a certain extent. It does not follow that the log-book shows the precise condition of things as they were. It is only the mate's idea of how the trip should be put down.

Mr. FRANK.—It is more than the mate's idea. The captain has testified that it is his idea, and it was put down under his supervision and dictated by him. It is a confession by the captain of what was going on.

The COURT.—Let the question be answered.

A. In my opinion, the weather as described in this log-book, if the ship had been stowed with less cargo in her lower hold, the ship would not have come to so much damage as she did get. I do not put that forth as opinion but what a ship might be damaged off the Horn, but, as far as I can see in this log-book, she had no unusual weather off the Horn.

Mr. FRANK.—Q. Is there anything in the log-book that would indicate to your mind that the vessel was unusually stiff, from the actions of the vessel, as described in the log-book?

A. Yes, by the entries in this log-book, even before she gets to the Horn, in what we call moderate latitudes, she is described as laborsome and rolling heavy under normal conditions.

(Deposition of Samuel H. Quayle.)

Q. And what would that indicate to your mind, as an experienced mariner, regarding her lading?

A. The ship was too stiffly laden. By the entries in the log-book, the master himself most likely thought so, as he was lifting some cargo out of the lower hold into between-decks, and trying to rectify some of its laborsomeness.

Q. You find an entry there, do you, where the master raised the cargo to ease the straining of the ship?

A. Yes, sir.

Q. Will you turn to that, please?

A. Can you give me the date—I think it is October.

Q. It is October 12th. A. Am I to read it?

Q. I want you to look at it and see what the conditions were at that time, and tell us of the wind and the weather.

A. That day the ship was under whole topsails, which means a moderate gale, perhaps nothing unusual. Of course, they cannot work the cargo and lift the cargo in very heavy weather. The weather previously was a little—

The COURT.—Q. He has asked you what the weather was at the time the cargo was shifted.

A. At the time the cargo was getting shifted, the weather was what we call ordinary moderate gale; nothing to hurt the ship. They generally have to wait for an opportunity to do this sort of thing.

Mr. FRANK.—Q. See if there is anything imme-

(Deposition of Samuel H. Quayle.)

diately preceding that date to warn him of the condition of his vessel.

A. There is nothing preceding that out of the ordinary, except to indicate to the master that his vessel was laborsome and needed some cargo lifted from the lower hold of the ship into the upper part of the ship, to make her more sea-kindly.

Q. Now, if you will look on September 17th, I think it is, what do you find there is the description of the wind and the sail that the vessel was carrying, and how she was behaving. You can read it out.

A. "P. M. Fresh breezes with head sea; ship under topsails and mainsail." That indicates a moderate gale of wind, an ordinary breeze, a good breeze, but nothing to hurt a ship. "4 P. M., more moderate. 10 P. M., set lower main topgallant sail and main topgallant sail. Midnight, still heavy sea with southwest squalls. 2 A. M., set lower foretopgallant sail, jibs, etc." Weather "More moderate." 8 A. M., stowed mainsail, with violent rolling. No work done, being Sunday."

Q. What does that indicate to your mind under those conditions, the rolling that is described there, as to the vessel being properly stowed or otherwise?

A. I should say the ship was laboring then.

Q. Where were they at that time?

A. They were in 39° south, in the South Atlantic, just a little below the River Platte; between the River Platte and Staten Island, where we usually encounter

(Deposition of Samuel H. Quayle.)

what we call moderate weather, not so stormy as we have to put up with off the Horn.

Q. On September 18th, do you find something there about the carpenter calking the decks?

A. Yes, sir.

Q. Just see what the conditions were then.

A. Light northerly breeze, carpenter calking the main deck; hands securing the cargo fore and between-decks, the lower fore and between-decks in the forward end of the ship, both in the lower hold and between-decks. The carpenter was calking the main deck.

Q. What would you say concerning the condition of a vessel whose decks required calking in that latitude, not having met with any unusual weather from the time she had departed on her voyage?

A. That it should not have been necessary to be calking down there.

Q. What would it indicate to you in reference to the action of the vessel?

A. That the vessel was laboring and opening her decks, straining her decks at the time, and they found it necessary to calk them.

Q. The carpenter has said something about the decks usually being opened or requiring calking when they passed through the hot tropics. Is that in the neighborhood where such things are likely to happen?

A. No, sir, it was rather past where they would be doing it, if it was caused by passing through the tropics.

(Deposition of Samuel H. Quayle.)

Q. After having experienced adverse weather off the Horn and turning back, would the wind be favorable or otherwise to making the Falkland Islands?

A. If the wind was adverse for getting around the Horn to the westward, it would be a fair wind to go to the Falkland Islands.

Q. In a steel ship, when the vessel is laboring and straining, what parts of the vessel would likely be affected the most? A. The decks, first of all.

Q. What effect would it have upon the decks?

A. Open the seams up, and make the decks work; that is, making them leak.

Cross-examination.

Mr. PAGE.—Q. When a ship is straining, or, rather, when a ship is rolling, and rolling very heavily, what is the first weak spot in the ship—the spars?

A. It is a good deal according to the rig of the ship, and according to the strength the rigging is placed in a ship.

Q. Is it not the common understanding among seamen that when a ship rolls very heavily indeed, her spars are likely to be affected?

A. Yes, sir, if she rolls with a natural roll, with heavy swells on abeam; and a natural roll is not a jerk or laborsome.

Q. Is not the fact of jerking something that would produce an injury to the spars?

A. No, it is not always necessary, in my opinion.

(Deposition of Samuel H. Quayle.)

Q. Will you look in that log-book as of the first day of October, and say whether, on that day, there was not a gale and the ship was laboring and shipping large quantities of water. Does it not say so?

A. Shall I read it out?

Q. No; isn't it practically that? If I am wrong, correct me, because I do not want so much put into the record. Does not that show the existence of a fresh gale and the ship shipping large quantities of water?

A. There is a fresh gale mentioned in the log-book. Although there is a fresh gale, there is nothing unusual to hurt or strain a ship under ordinary circumstances.

Q. Please answer my question, Captain. I asked you whether the entry in the log-book on October first did not show the existence of a fresh gale and the ship was laboring and shipping large quantities of water.

A. It mentions here a fresh gale.

Q. Can you not tell me whether it mentions those facts?

A. That is a fact. But another thing, shall I mention my opinion as to what sail she has got?

Q. No, you are not here as an advocate of either party; you are simply to tell the truth. Now, I ask you the question, if it does not show a fresh gale, the ship laboring and shipping large quantities of water?

A. Yes, sir.

Q. Now take the second of October; what weather does it record on the second of October?

(Deposition of Samuel H. Quayle.)

A. Still a hard gale.

Q. And what sort of weather on the third of October?
A. A gale.

Q. On the fourth of October, what sort of weather?

A. No gale that day.

Q. Does it not show that the vessel was heaved to on that day, and that they were using oil out of the water-closet?

A. Yes, sir, they were using oil in the water-closet. "2 A. M."—that was the next morning—"Gale started afresh."

Q. And the vessel was heaved to and they used oil out of the water-closet?

A. Yes, sir, the vessel must have been heaved to.

Q. And on the fifth, was she not still hove to and a heavy gale?

A. No. The gale was increasing again. Yes, afterwards they set sail, and then had to take it in again.

Q. And heave to?

A. No, she was not hove to. She has reefed sails on.

Q. Does it not show she was hove to there?

A. Yes, sir, it does; hove to on the port tack.

Q. Is she not still hove to on the 6th, and heavy weather?

A. Allow me to give an opinion.

Q. No, never mind an opinion. On the 6th was she still hove to, and a gale?
A. Yes, sir.

(Deposition of Samuel H. Quayle.)

Q. And the entry is that there was no chance to serve out fresh water? A. Yes, sir.

Q. Where is the water kept?

A. In a tank in her hold amidships. That is the usual thing in a ship.

Q. And on the 7th there was still a gale?

A. Yes, sir.

Q. And on the 9th? A. You missed the 8th.

Q. I say on the 9th.

A. Weather moderate on the 9th, and the ship under topsails.

Q. Taking water through the fore hold, was she not?

A. No, I think you have the wrong date there. October 9th says, "Find that a considerable quantity of salt water had gone fore hold through the decks." But that was not that day. That was through the previous gale.

Q. On the 11th did she have hard weather?

A. Yes, the breezes seem to have increased. They got moderate weather, and increased, and then got more moderate weather again.

Q. What is the entry about the increase?

A. "4 P. M. Breeze increasing rather quickly, shortened down. 5:30. Called all hands and took in mainsail and west topsails. Continuous seas breaking on board and flooding the decks fore and aft."

Q. On the 12th was the day when you found they

(Deposition of Samuel H. Quayle.)

were shifting the cargo from the forepart of the fore hold and raising it between-decks? A. Yes, sir.

Q. Now, after having read all of those entries, showing the ship was hove to a large portion of the time, and that every day from the first to the tenth of October she had heavy weather, do you mean to say nothing occurred in the meantime out of the ordinary in the way of weather?

A. Taking the sails the ship was carrying, there was nothing out of the ordinary.

Q. The entries, in your judgment, are not true?

A. The entries are true, but the weather is not unusual.

Q. It is not unusual for a vessel to be hove to for three days? A. No.

Q. Do you call that fairly good weather?

A. No, but it is not unusual.

Q. Is not that the kind of weather in which ships are very often injured and lost, when they are driven to heave to in the sea? A. Yes, sir.

Q. And was there not a terrific gale on the 13th?

A. Before I answer that, I will say there is no extreme gale mentioned there. From the sail the ship is carrying, there was no extreme gale. On the 13th there was, yes, taking the upper topsails, after setting down two lower sails.

Q. Does it not show a terrific gale?

A. Yes, sir, squalls blowing with terrific violence.

Q. What sort of weather was it on the 14th?

(Deposition of Samuel H. Quayle.)

A. During the day the gale increased to hard squalls.

Q. And on the 15th?

A. Gale increasing; bad, threatening appearance.

Q. On the 16th? A. High gale still continues.

Q. And on the 17th?

A. Gale started at 8 o'clock, blew with terrific force.

Q. And on that day they could not serve any fresh water because they had no chance to; does not that appear? A. Yes, sir, that appears.

Q. And on the 18th, 19th, 20th, 21st, 22nd, 23d, 24th and 25th, do not those gales continue every day during all that time?

A. Fresh gales. Fresh gales are only good working breezes. On the 25th they got down the lower top-sails again.

Q. Previous to that, from the 18th on to the 25th, does not every day show the existence of hard weather, bad weather—that is, gales?

A. A moderate gale on the 23d; on the 22d a high gale; on the 19th a fresh gale. That is the only thing you can make out of that. There was a gale on October 18th.

Q. And on October 20th?

A. A fresh gale on the 20th.

Q. Now go on to the 26th, did they have a heavy gale that day?

A. Yes, sir, it mentions a gale from the southwest.

(Deposition of Samuel H. Quayle.)

Q. And on the 27th, what sort of weather did they have that day?

A. Sea smooth, ship under small sail.

Q. No gale that day?

A. It does not mention so. I will read it all—

Q. Don't read it all if it does not say anything about it.

A. "Staten Island in sight. Light southwest breezes and sea smooth. Ship under small sail. Reefed the main topmast, port tack. After grave consideration and consultation with officers, and tradesmen re the damage done to the ship since September 26th to date, and the continuous gales of wind and storms encountered, and the state of the ship generally settling down with the constant leakage through the decks after the great laboring and straining, decided to throw overboard from the ends of the ship, fore and aft hatches, about 50 tons in all."

Q. That is the time of jettisoning the cargo?

A. Yes, sir.

Q. Are you aware of the fact that the log shows a number of the men were injured, sometimes as many as seven men of the crew being laid up, in one form or another?

A. Yes, I am aware of that.

Q. Are you aware of the fact that two of the boats were washed overboard?

A. Yes, I know that.

Q. That everything was washed out of the galley, including the cook?

A. So it says.

Q. All these things you consider something that is naturally to be expected on every trip around the Horn?

(Deposition of Samuel H. Quayle.)

A. I have seen it, but it is not naturally to be expected.

Q. Then your idea about the weather not being unusual is simply because you have gone through equally bad weather, not because it is not to be expected or to be expected?

A. I have gone through bad weather off the Horn. We always expect bad weather off the Horn, and ships are stowed so as to expect it.

Q. And every time you go around the Horn, do you expect such bad weather as is detailed there, some 36 days of continuous storm, with perhaps one day's exception; is that the sort of weather to be expected in going around the Horn?

A. It may be expected, but we do not always get it; but it is the weather we look for off the Horn.

Q. That is your idea, to prepare for having such weather? A. We prepare for it.

Q. But is it not unusual weather, is it not extraordinary weather, gales for 36 days?

A. It is not unusual down off the Horn.

Redirect Examination.

Mr. FRANK.—Q. Is the sail that a vessel carries during a particular period and the barometric conditions better indications of the condition of the wind than the entry the mate makes in the log-book that a gale is a big gale or a terrific gale? Which is the better one to guide you in your judgment?

(Deposition of Samuel H. Quayle.)

A. The sail the ship is carrying is to be considered, because in strong gales the ship cannot carry certain sails.

Q. In forming your judgment, is it based on the fact that she carried certain sails which she could not have carried if the conditions were unusual?

A. She could not carry the sails if it was extremely unusual. In an extreme gale the ship cannot carry any upper canvas.

Q. In reference to the effect of the water in filling the decks or in washing over the vessel, is that greater on a stiff ship than it would be on a lively ship?

A. Yes, sir, much greater.

Q. Then, these damages and injuries that occurred down there might as well be from the nature of her stowage as from unusual conditions of weather?

A. Now, understand me, it could be caused by the unusual stowage.

Q. That is, the unusual condition of her stowage, the stiffness of the vessel would tend to cause her to receive greater injury in a given condition of the weather than she would otherwise? A. Certainly.

Q. Is the heaving to necessarily an indication of bad weather, or might it not also be an indication of bad stowage, making her strain so that it would be better to heave to than to keep on?

A. Not in this case. I do not see anything in the log-book but she is meeting adverse winds, and the ship has to be reduced down because she cannot thrash against the

(Deposition of Samuel H. Quayle.)

high winds. At the same time, was this ship running with this wind free, when the other way she would be carrying her sails. It is a condition that we have to meet with.

Q. I think your attention was called to the entry in the log on October first, and you were confined to the question as to whether or not it did not show fresh gales. What other conditions are described in the log on that day that in your judgment indicate that the weather was nothing out of the way?

A. That the ship was carrying reefed upper topsails and a full main upper topsail, and when a ship can carry them with a high wind, that is what we call head-reaching, the gale is not an unusually heavy gale; nothing out of the way.

Q. And is that the condition you find in regard to the other entries to which your attention was called?

A. Some of them. On that same day, October first, the gale increased and they had to reduce more sail. On October first the gale increases, but the first entry that I alluded to, in the first part of the day, the gale increases and they reduce the sail.

Q. Does it indicate what reduction they made?

A. Yes, sir; lower topsails. That is the condition we have to put the ship into when there is a strong gale.

Q. And is that anything unusual?

A. No, nothing unusual.

Q. An ordinary experience at sea?

(Deposition of Samuel H. Quayle.)

A. It is my experience at sea.

Q. I say, an ordinary experience at sea?

A. Oh, yes, an ordinary experience.

WILLIAM STEELE, called for the libelant, in rebuttal, sworn.

Mr. FRANK.—Q. What is your business?

A. Master mariner.

Q. How long have you been master mariner?

A. About 23 years.

Q. Sailing in what business?

A. In merchant sailers out on to this coast and Australia.

Q. English vessels? A. Yes, sir.

Q. Did you ever come around the Horn?

A. Out this way about twenty-five or thirty times.

Q. What vessel are you in now?

A. The "Simla," a four-masted ship.

Q. A sailing vessel? A. Yes, sir.

Q. Do you know the ship "Musselcrag"?

A. I do not know the ship, but I know the build of her by Lloyd's book. I know the kind of vessel she is.

Q. You know her class? A. Yes, sir.

Q. She is what is called a modern built vessel?

A. Yes, sir.

Q. She is beamy and naturally a stiff ship?

A. Yes, sir.

(Deposition of William Steele.)

Q. What would you say, Captain, with reference to a ship that carried 2,350 tons of cement in her lower hold and 928 in her between-decks, what would you say with reference to her being properly stowed or otherwise?

A. Well, I would consider her not properly stowed, not with a cargo of cement.

Q. How would such stowage as that affect her seaworthiness? A. It would affect it considerably.

Q. In what way?

A. It would make her too stiff, too laborsome.

Q. In a seaway, what would be the result to the vessel?

A. She would strain herself naturally, and in very bad weather she will strain herself to that extent and break her running gear, such as top sheets, that they will have no sail to carry her, and that makes her a dozen times worse, makes her unmanageable.

Q. How would it affect her decks?

A. It would affect her decks as quick as anything. If she was a new ship, her decks would show it. Her decks would show it first, very likely.

Q. Have you examined this log-book, Captain?

A. Yes, sir.

Q. And made yourself familiar with the condition of wind and weather as therein described?

A. Yes, sir.

Q. And the behavior of the vessel?

A. Yes, sir, I have looked at it all.

Q. What would you say concerning the weather that that vessel is described in that log-book as having exper-

(Deposition of William Steele.)

inced off the Horn, regarding it being an unusual condition or otherwise?

A. No, sir, I do not think she had as bad weather as I have had off it on two occasions.

Q. How is it with reference to being an unusual condition or not?

A. It is not unusual. It is the ordinary course of weather.

Q. What is to be expected coming around the Horn?

A. What is to be expected coming around Cape Horn, yes, sir.

Q. If, under those conditions, a vessel labored very heavily and strained herself, what conclusion would you come to in respect to her stowage?

A. That she had too much cargo in her lower hold; I would say that sure.

Q. And you would attribute her injuries to her stowage rather than to the weather? A. I do.

Mr. PAGE.—Do not lead the witness quite so badly as that.

Mr. FRANK.—Well, I beg your pardon, Mr. Page.

The WITNESS.—That is what I would attribute it to. I have on two occasions spent fifty days around Cape Horn, in coming here to this port with cement.

Mr. FRANK.—Q. How do you determine, Captain, from the log-book, what the condition of the weather is—from the sail that the vessel carries or from the suggestions in the log about a fierce gale or tremendous weather?

(Deposition of William Steele.)

A. By the sail that she carries, and everything shows a tendency that it is only the ordinary weather. The whole log-book shows it is only the tendency of ordinary weather around Cape Horn.

Q. That is, you take into consideration the entire condition, and not the statement of the mate that he had bad weather?

A. Yes, sir, just the ordinary conditions off Cape Horn.

Q. What would you say in regard to a vessel that would go, for instance, from here to Port Costa, without any ballast in her, in regard to her stiffness?

A. Well, I would not like to trust mine unless I had authority to do so. She must be a very stiff ship.

Q. She must be a very stiff ship if she can do that?

A. Yes, sir.

Q. Meeting adverse weather, going around the Horn, that be favorable or otherwise to making the Falkland Islands?

A. If it was adverse weather to go around Cape Horn, it would be favorable to go to Falkland Islands.

Cross-examination.

Mr. PAGE.—Q. In regard to a ship, who is supposed to be the man that best knows when she is properly stowed?

A. Well, her master is supposed to know as well as any one, and the stevedore; they generally consult together.

Q. And if they come to a conclusion together, is it not

(Deposition of William Steele.)

likely they have exercised the best judgment that could be called upon?

A. Well, was this master ever in the ship before?

Q. I ask you the question, when the master of the ship and the master stevedore consult on the matter, is it not likely they come to a fair conclusion on the subject?

A. If a master is appointed on a ship, you must take into consideration the build and everything else, and if you go out with a tow you gain a little experience of knowing her; a ship kicks sometimes when you don't think it will.

Q. And ships are very different, are they not?

A. Yes, sir.

Q. Ships of the same build have different characteristics, have they not?

A. Some little things, but not materially.

Q. The question of whether a ship is a little bit stiff, or whether she is a little bit cranky, is not that a matter that can always be told from the build?

A. From the build, generally.

Q. Can that be told absolutely from the build, or better from the experience of the ship?

of build would have exactly the same tendencies, no exceptions; they would have the same tendency with reference

A. Better from the build.

Q. So, in that case, two ships of the same character to being stiff or tender.

(Deposition of William Steele.)

A. As far as being stiff or tender, yes; but they might have some other peculiarities.

Q. What other peculiarities?

A. Well, some little different steering, or something better for carrying sails; some carry one thing better or another thing better, which is a little in the molding, that is all.

Q. You say you have read over that log-book?

A. Yes, sir.

Q. And there is nothing there that any ship might not ordinarily expect to meet?

A. That is all.

Q. In other words, it is the common weather off Cape Horn?

A. It is the usual weather off Cape Horn.

Q. Did you ever come around Cape Horn without having to heave to for days at a time?

A. I think once I had a fairly nice passage around; about once.

Q. In every passage that you have, do you have gales of different forms of intensity, that will last from thirty-six to forty days?

A. I have been fifty days getting 60 miles.

Q. I asked you if, in every voyage you have made, you had that experience.

A. No, sir, not every one; certainly not.

Q. It is an unusual experience to have that kind of a gale, thirty-six or forty or fifty days?

A. A great many vessels have to suffer it.

(Deposition of William Steele.)

Q. You were off the Horn for fifty days?

A. Yes, sir, on two different times.

Q. All the time in heavy gales?

A. Moderate and heavy. It would be heavy and then moderate a little again; perhaps moderate for twelve hours.

Q. If that was so common, why should you mention it as being extraordinary in your own case; why should you mention the fact that once you underwent troubles of that kind?

A. I say twice.

Q. Well, twice out of twenty-five times would be rather unusual.

A. I do not think that this log-book points to the weather that I had at all. It only points to ordinary weather.

Q. You say that was a moderate passage?

A. I would say it was an ordinary passage.

Q. Moderate weather?

A. I do not say it is moderate, but is an ordinary passage.

Q. What ship is yours? A. "Simla."

Q. To whom is she consigned here?

A. To myself.

Q. Who is doing the ship's business? A. Myself.

Q. Who is going to load her out? A. McNear.

Q. How large a ship is yours? A. 2087.

Q. When a ship is stiff, how does it affect her spars?

(Deposition of William Steele.)

A. In what way?

Q. In a heavy gale.

A. If she rolls heavy, it might strain the spars, or it might not. If it is a good, new ship, and all the gears are good, it might not hurt the spars, but it might hurt the standing rig, such as topsail sheets. You lose your sails, then, and your ship becomes unmanageable through being too stiff.

ARTHUR BROWN, called for the libelant, in rebuttal, sworn.

Mr. FRANK.—Q. What is your business?

A. Ship liner.

Q. Did your firm line the ship "Musselcrag" in July, 1900, on her outward voyage? A. Yes, sir.

Q. Did you see the ship leave here for Port Costa?

A. Yes, sir.

Q. What was her condition with reference to having ballast or otherwise?

A. She had lumber in the lining in the lower hold.

Q. That is the lumber they used to line the ship when she took in her cargo? A. Yes, sir.

Q. Was that all she had? A. Yes, sir.

Q. She had no ballast?

A. No, sir; they used the lumber lining to line her, going up.

Q. That is, they distribute it all over the sides and back and up between-decks, so as to give an extra side to the vessel? A. Yes, sir.

(Deposition of Arthur Brown.)

Q. So that that would not act as ballast at all?

A. No, sir.

Cross-examination.

Mr. PAGE.—Q. How many tons of lining did she have on board? A. I do not know.

Mr. FRANK.—I presume there is no question, Mr. Page, but what this entire cargo was consigned to J. D. Spreckels & Bros. Company. Is that admitted?

Mr. PAGE.—Yes, sir.

Mr. FRANK.—I have just one other proposition. From your examination, Mr. Page, it would indicate that you were making some kind of a point concerning who hired the stevedores to load this vessel. Is that a point at issue with you?

Mr. PAGE.—It is in evidence that your parties appointed the stevedore.

Mr. FRANK.—Very well, I will introduce in evidence the charter party. I will ask you to look at it, Mr. Page.

Mr. PAGE.—What is it you want me to see?

Mr. FRANK.—I simply want you to see that it is all right, because I am going to offer it in evidence.

Mr. PAGE.—As far as I know, it is all right. It is a copy.

Mr. FRANK.—Yes, it has the signature here.

Mr. PAGE.—Where is the clause you want to refer to?

(Deposition of Arthur Brown.)

Mr. FRANK.—This is the clause: “It is agreed that the charterers shall have,” etc.

Mr. PAGE.—I have no objection to your offering that clause.

Mr. FRANK.—We offer in evidence this portion of the charter-party, “And it is agreed that the charterers shall have the option of appointing the lumpers and stevedores who are to take in and stow the cargo, who are to be paid by the owners one shilling per ton, weight measurement, but it is especially agreed that the lumpers and stevedores shall be under the direction of the master, and the owners responsible for all risks of loading and stowage.”

That is our case, your Honor.

Mr. PAGE.—That is all we have, your Honor.

Testimony closed.

[Endorsed]: Filed Nov. 24, 1902. Geo. E. Morse,
Clerk.

[Title of Court and Cause.]

Stipulation as to Original Log-Book on File.

It is hereby stipulated and agreed by the parties hereto that the original “log-book” introduced in evidence upon the trial of said action and now on file herein, need not be copied and incorporated into the “Apostles on Appeal,” but that the same be filed with the record on appeal to the said United States Circuit Court of Ap-

peals, in the office of the clerk of said Court of Appeals, and may be used and referred to by either party, in case of an appeal, as effectually as if the said "log-book" had been copied in full and incorporated into the said apostles.

Dated December 12th, 1904.

NATHAN H. FRANK,

Proctor for Libelant.

PAGE, McCUTCHEEN & KNIGHT,

Proctors for Claimant and Respondent.

[Endorsed]: Filed Dec. 13, 1904. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Opinion.

NATHAN H. FRANK, for Libelant.

PAGE, McCUTCHEEN, HARDING & KNIGHT, for Respondent.

DE HAVEN, District Judge.—This libel was filed against the ship "Musselcrag" to recover for alleged damage to a cargo of cement, shipped on that vessel at Antwerp for carriage to the port of San Francisco. The cargo consisted of 3,278 tons of cement, and of this 2,350 tons were stowed in the lower hold and 928 tons between-decks. The cement was damaged by reason of water, which came through the seams of the deck, and it is claimed by the libelant that the opening of the seams and the consequent damage to the cargo, was the

result either in whole or in part of improper stowage, in this, that the cargo was not properly distributed, that too much weight was placed in the lower hold, which made the ship so stiff that she would not roll easily, and caused her in a rough sea, to right herself quickly with a jerk or sudden lurch, the effect of which was to place so great a strain upon the deck that its seams were opened. In short, the contention of the libellant is, that the ship was rendered unseaworthy by the improper manner in which her cargo was laden. When she left Antwerp the vessel was sound in hull, and properly equipped, and the evidence shows that in attempting to round Cape Horn she met with storms of extraordinary severity and of several days' duration, during which she labored and strained to such an extent that the seams in her deck were opened and the deck almost continuously flooded with water, making it necessary, in the judgment of the master, to raise some of the cargo from the lower hold, and stow it between decks, in order to ease the ship; and about two weeks after this was done, fifty tons of cement were taken from the lower hold and jettisoned. By reason of adverse winds and the violence of the storms thus encountered, the ship was compelled to abandon the attempt to pass around Cape Horn, and she changed her course and came to San Francisco by way of the Cape of Good Hope and Australia.

By the terms of the bill of lading the ship was not to be responsible for any loss or damage which the cargo might sustain by reason of perils of the sea. The question of fact, therefore, to be decided, is, whether the

damage for which the libellant sues was occasioned by perils of the sea or by improper or negligent stowage, causing the vessel to labor and strain more than she otherwise would have done, and thus contributing to the opening of the deck seams. Upon this question there is a decided conflict in the evidence. Upon the one side three witnesses, one a competent stevedore, and two master mariners, gave it as their opinion that in its stowage the cargo was not properly distributed; that there were about 150 tons too much put into the lower hold and that the effect of thus stowing a heavy compact cargo like that of cement, caused the ship to roll more heavily and increased the strain upon her decks. Upon the other hand, the master of the ship, a seaman of long experience, testified that the cargo was laden under his general supervision, and was, in his judgment, properly distributed; that the ship did not give evidence of unusual straining until the severe weather was encountered, and this evidence is corroborated by the second mate, and also finds some support in the testimony given by two of the stevedores who assisted in loading the ship.

It having been shown that the vessel encountered storms of such violence as to reasonably account for the opening of the seams in her decks and the consequent damage to her cargo, the burden of proof is upon the libellant to establish the fact of improper stowage, contributing to the strain upon the vessel's deck and the resulting injury thereto. *The Neptune*, 6 Blatchf. 193; Fed. Cas. No. 10,118; *The Polynesia*, 30 Fed. 210; *The Fern*

Home, 24 Fed. 502; *The Burswell*, 13 Fed. 904; *Clark vs. Barnwell*, 12 How. 280; *Muddle vs. Stride*, 9 Carr. & Payne, 380. It is not deemed necessary to analyze the testimony, or to discuss the reasons which were given by the expert witnesses in support of the opinions expressed by them. It will be sufficient to say, that after careful consideration of all the evidence, I have reached the conclusion that it is not sufficient to establish the fact of improper stowage. Stowage with a view to the proper trim of the vessel and the ease with which it will be able to carry its cargo when at sea, is a matter which calls for the judgment of those under whose supervision it is done. The carrier is only required to exercise reasonable care and skill in stowing cargo, and the mere fact that if it had been differently distributed the ship would have been more easy, does not necessarily show that the cargo was negligently stowed; that is, stowed in such a manner as would not have been approved at the time by a stevedore or master of ordinary skill and judgment, knowing the voyage upon which the vessel was about to sail, and the weather and sea conditions which she might reasonably be expected to encounter. In order to establish such negligence as is claimed here, the disproportion between the amount stowed in the lower hold and that placed between decks, must be so great as to warrant the conclusion that reasonable judgment was not used in loading the vessel, and I am not satisfied from the evidence that such great disproportion existed in this case.

2. It is further claimed by the libellant that the ship

is liable because of the failure of the master to repair her damage at the Falkland Islands, instead of proceeding to Australia with the decks in the condition in which they were when the attempt to round Cape Horn was abandoned. The evidence certainly shows that the injury which the vessel's decks suffered before sailing for Australia was so severe as to render them unseaworthy with respect to the protection of the cargo, and during the voyage to Sydney the vessel encountered weather so rough that her decks were often filled with water from which cause the cargo received additional damage. When the master of the "Musselcrag" started for Australia, he was within sixty miles of the Falkland Islands, and it seems to me that in the then condition of the ship, he ought, in the exercise of a reasonable judgment, to have sought that port for the purpose of making repairs, and not doing so, he failed to use that care for the protection of his cargo from further damage which was incumbent upon him. For this negligence and breach of the contract of affreightment, the ship is liable. *Niagara vs. Cordes*, 21 How. 7. It is argued upon the part of the claimants, that assuming this action of the master to have been negligent, it was a fault or error in navigation or in the management of the vessel, for which the vessel is not responsible under the 3d section of the Harter Act, 27 Stats. 445; but this was not a fault or error in navigation, or in the management of the vessel, but simply the neglect of the master to take proper care for the protection of the cargo in his custody.

3. The question relating to the measure of damages is more difficult. It is certain that a great part, and probably the greater part of the whole damage which the cargo sustained on the voyage between Antwerp and San Francisco, was occasioned by perils of the sea before the vessel changed her course at Cape Horn and sailed for Australia; but the damage received by the cargo before such change of course and that sustained between Cape Horn and Australia, cannot be separated. The libelant insists that because this separation cannot be made, the ship should be held responsible for the entire damage, as well that occasioned without its fault as that which was caused by the negligence of the master in not going to the Falkland Islands for repairs. In my opinion, the more equitable rule to be applied in this case, is to divide the damages. Under this rule it is reasonably certain that the ship will be required to respond for all of the damage occasioned by its fault, and the libelant has no right to insist upon more than this. In the case of *The Shand*, 16 Fed. 570, it was said;

“In the case of the ‘*Mary Belle Roberts*,’ where the loss from sea peril, if any, was comparatively small, it was just to hold the carrier answerable for the whole unless he could show how much was to be deducted on account of the minor cause as to which he might claim exemption. But if the general circumstances of the case show that the loss has probably arisen as much from the act or cause attributable to the one party as from that attributable to the other, there should be no justice in imposing the whole loss upon one

simply because he could not separate and distinguish the exact amount arising from his own fault, and the rule adopted by Sprague, J., is, in such a case obviously the juster one."

The rule referred to in the above quotation, was announced by Sprague, J., in *Snow vs. Carruth*, 1 Spr. 324; Fed. Cas. No. 13,144; as follows:

"I am satisfied, that the great loss in this case, (above the necessary leakage), was partly attributable to the negligence of the carrier, and partly to the negligence or misfortune of the shipper or consignee, and that it is not practicable to ascertain for how much of the loss the one party or the other, is, in fact, responsible. I am, therefore, obliged to adopt some arbitrary rule in determining the amount to be allowed the respondents. An analogy may be found in the rule adopted by courts of admiralty, in cases of collision, when both parties are in fault. In such cases, the aggregate amount of the damages is divided equally between the parties."

The case of the "*Young America*," 26 Fed. 174, is precisely in point. "*Young America*" was a tug, and a canal boat which it had in tow was stranded, and after having been abandoned by the tug became almost a total loss. The tug was sued by the owner of the canal boat for the damage thence resulting. The Court found that the stranding was not caused by the tug's negligence, but that the tug was in fault in leaving the canal boat without any one in charge of it, and that by reason of such abandonment the damage to the canal

boat had been increased. It was held that the damages should be divided, the court saying:

“The nature of the case is such that it seems clearly impossible to determine with any approximation to exactness how much of the whole loss is attributable to the original stranding, and how much to the subsequent want of protection. The best that can be done under such circumstances is to divide the damages, as was done in the case of *Snow vs. Carruth*, 1 Spr. 324.”

It is not deemed necessary to further discuss the questions arising in this case. My conclusion is that the libelant is not entitled to recover for the cargo which was jettisoned, but is entitled to recover one-half of the damage sustained by the remaining cargo, with interest from the date of the filing of the libel and costs of suit, and the case will be referred to Commissioner George E. Morse, to ascertain and report such damages. Let such a decree be entered.

[Endorsed]; Filed Oct. 9, 1903. Geo. E. Morse, Clerk.
By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Interlocutory Decree.

This cause having been heard on the pleadings and proofs, and due deliberation being had thereupon, it is hereby ordered, adjudged and decreed, that the libelant do have and recover one-half of the damages sustained by the part of the cargo delivered in bad order as in said

libel alleged, with interest from the date of the filing of the libel, and costs, and that the said cause be, and the same hereby is, referred to George E. Morse, United States Commissioner, to ascertain and report to the Court the amount of said damage.

Dated, October 27th, 1903.

JOHN J. DE HAVEN,
Judge of the District Court.

[Endorsed]: Filed Oct. 27, 1903. Geo. E. Morse,
Clerk.

[Title of Court and Cause.]

Final Decree.

The above-entitled cause having heretofore been referred to George E. Morse, United States Commissioner, to ascertain and report the damages, in accordance with the opinion of the Court heretofore rendered, and the said Commissioner having reported the said damages in the sum of twenty-eight hundred and fifty-two and $58/100$ (2852.58) dollars, and the time for filing exceptions to said Commissioner's report having expired, and no exceptions having been filed:

On motion of Nathan H. Frank, proctor for libelant, it is hereby ordered, adjudged and decreed that the said report be in all things confirmed, and that the said libelant do have and recover of the said claimant in this action the said sum of twenty-eight hundred and fifty-two

and 58/100 (2852.58) dollars, together with interest thereon from the date of this decree until paid, and costs to be taxed herein; and on like motion,

It is further ordered that a summary judgment be and the same hereby is entered for the amount of this decree against C. W. Corsar, the claimant of said vessel, and against Herman L. E. Meyer and George H. C. Meyer, the sureties on the bond and stipulation given to the marshal for the release of said vessel from custody in said cause, and that the libelant have execution thereon to satisfy this decree.

Dated, November 29th, 1904.

JOHN J. DE HAVEN,

Judge.

[Endorsed]: Filed Nov. 29, 1904. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Notice of Appeal of C. W. Corsar.

Please take notice that C. W. Corsar, the owner of the ship "Musselcrag," etc., respondent in the above-entitled cause, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court of the United States, for the Northern District of California entered in said cause on

the 29th day of November, A. D. 1904, and from the whole of said decree.

Dated December 28th, A. D. 1904.

PAGE, McCUTCHEEN & KNIGHT,

Proctors for Respondent.

To the Libelant in the Above-entitled Cause,

and to Nathan H. Frank, Esq., its Proctor.

Service of a copy of the within notice of appeal is hereby admitted this 28th day of December, 1904.

NATHAN H. FRANK,

Per LILLICK,

Proctor for Libelant.

[Endorsed]: Filed Dec. 29, 1904. George E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Assignment of Errors of C. W. Corsar.

Now comes C. W. Corsar, the owner of the ship "Mus-selcrag," etc., respondent in the above-entitled cause, and herewith files with the Court the following assignment of errors in the decision and decree of this Court:

1. The Court erred in entering its decree in favor of the libelant in the sum of \$2,852.58.

2. The Court erred in not dismissing the libel.

3. The Court erred in its findings that it was the duty of the master to seek the Falkland Islands and in holding it to be negligence on his part that he did not do so.

4. The Court erred in its finding that the act or omission of the master, if such it was, in not seeking the Falkland Islands was not a fault or error in the navigation or management of the ship within the protection of the Harter Act.

PAGE, McCUTCHEN & KNIGHT,
Proctors for Respondent.

Service of a copy of the within assignment of errors is hereby admitted this 28th day of December, 1904.

NATHAN H. FRANK,
Per LILLICK,
Proctor for Libelant.

[Endorsed]: Filed Dec. 29, 1904. George E. Morse,
Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Notice of Appeal of J. D. Spreckels & Bros. Co.

To the Respondent and the Claimant in the Above-entitled Cause and to Messrs. Page, McCutchen and Knight, their Proctors:

You and each of you will please take notice that J. D. Spreckels & Bros. Co., libelant above named, intends to and hereby does appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree of the District Court of the United States, in and for the Northern District of California, entered in the

above-entitled cause on the 29th day of November, A. D. 1904, and from the whole of said decree.

Dated, San Francisco, January 3, 1905.

NATHAN H. FRANK,

Proctor for Libelant, J. D. Spreckels & Bros. Co.

Due service of the within notice of appeal is hereby admitted this 4th day of January, 1905.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

[Endorsed]: Filed Jan. 4, 1905. James P. Brown, Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Assignment of Errors of J. D. Spreckels & Bros. Co.

Now comes J. D. Spreckels & Bros. Co., a corporation, libelant in the above-entitled cause, and makes this, its assignment of errors on the appeal taken by it in the above-entitled cause from the decree entered by the District Court of the United States for the Northern District of California on the 29th day of November, 1904, and states that error was committed by said Court in the making of said decree and in the proceedings prior thereto in the following matters, to wit:

1. The Court erred in finding that the libelant is entitled to recover only one-half of the damages sustained by the part of the cargo delivered in bad order as in the libel in said action alleged, and erred in entering its decree in favor of the libelant in the sum of two thousand

eight hundred and fifty-two and $58/100$ (2,852.58) dollars, and in not entering such decree in favor of libelant in the sum of five thousand six hundred and five and $16/100$ (5,605.16) dollars, together with a sum equal to the value of the cargo jettisoned by the ship.

2. The Court erred in not finding that the libelant is entitled to recover all of the damages sustained by the part of the cargo delivered in bad order, as in the said libel alleged, and also for the cargo jettisoned by the ship.

3. The Court erred in dividing the damages suffered by said libelant.

4. The Court erred in not finding that said vessel was unseaworthy at the inception of the voyage by reason of improper loading of said vessel, and that the damage to libelant was the result of such unseaworthiness and improper lading.

5. The Court erred in holding that the carrier is only required to exercise reasonable care and skill in stowing cargo with reference to the trim of the ship, and in not holding that a vessel with cargo stowed so as to affect her trim sufficiently to cause her to strain is unseaworthy.

6. The Court erred in holding that the carrier is only required to exercise reasonable care and skill in stowing her cargo with reference to the trim of the ship, and in not holding that the carrier warrants the ship seaworthy with respect to stowage of cargo as it relates to the trim of the vessel.

7. The Court erred in not finding that said vessel was improperly stowed, and in not finding that it was unseaworthy in that respect, and further in not finding that the straining of the vessel, opening of her seams, and consequent damage to libelant was due to such unseaworthiness.

Dated, January 3d, 1905.

NATHAN H. FRANK,
Proctor for J. D. Spreckels & Bros. Co.

Due service of the within assignment of errors is hereby admitted this 4th day of January, 1905.

PAGE, McCUTCHEN & KNIGHT,
Proctors for Claimants.

[Endorsed]: Filed Jan. 4, 1904. James P. Brown,
Clerk. By J. S. Manley, Deputy Clerk.

[Title of Court and Cause.]

Stipulation Re Transcript.

It is hereby stipulated that the transcript on appeal to be filed in the above-entitled action by C. W. Corsar, claimant, on his appeal from the final decree of the District Court of the United States, in and for the Northern District of California, entered in the above-entitled cause on the 29th day of November, A. D. 1904, may be used in the United States Circuit Court of Appeals for the Ninth Circuit as the transcript on appeal and with the same force and effect as if it had been duly filed as such,

on the appeal of J. D. Spreckels & Bros. Co., a corporation, from the said final decree entered in the above-entitled cause upon the 29th day of November, A. D. 1904.

Dated, San Francisco, January 5, 1904.

PAGE, McCUTCHEN & KNIGHT,
Proctors for Claimant.
NATHAN H. FRANK,
Proctor for Libelant.

[Endorsed]: Filed Jan. 4, 1905. James P. Brown,
Clerk. By J. S. Manley, Deputy Clerk.

Clerk's Certificate to Transcript.

United States of America, }
Northern District of California. } ss.

I, James P. Brown, clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed one hundred and twenty-five (125) pages, numbered from 1 to 125, inclusive, contain a full, true and correct transcript of the record in said District Court in the cause entitled "J. D. Spreckels & Bros. Co., a Corporation, vs. The Ship 'Musselcrag,' her tackle, apparel and furniture," made up in pursuance to Rule Four of the Rules in Admiralty of the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of seventy dollars and seventy cents (\$70.70), and that the same has been paid to me by the proctors for claimant and appellant.

Attest my hand and the seal of the said District Court this 25th day of January, A. D. 1905.

[Seal]

JAS. P. BROWN,

Clerk.

[Endorsed]: No. 1167. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Corsar, Claimant and Owner of the British Ship "Musselcrag," Appellant, vs. J. D. Spreckels & Bros. Company, Appellee, and J. D. Spreckels & Bros. Company, Appellant, vs. C. W. Corsar, Claimant and Owner of the British Ship "Musselcrag," Appellee. Transcript of Record. Upon Appeal and Cross-Appeal from the United States District Court for the Northern District of California.

Filed January 25, 1905.

F. D. MONCKTON,

Clerk.

*In the District Court of the United States, for the Northern
District of California.*

J. D. SPRECKELS & BROS. CO.,
Libelant,)
vs.)
Ship "MUSSELCRAG," etc.)

Stipulation as to Certain Facts in the Cause.

It is hereby stipulated that on the trial of the above-entitled cause, it shall be taken as a fact admitted to be true that all the facilities necessary for effecting repair of the injuries to the "Musselcrag," occasioned during her voyage up to the time she reached about the latitude of the Falkland Islands, could have been had at Port Stanley in the said Islands.

PAGE, McCUTCHEN, HARDING & KNIGHT,
Proctors for Respondent.

[Endorsed]: Filed October 27th, 1902. Geo. E. Morse, Clerk. By J. S. Manley, Deputy Clerk.

I, James P. Brown, Clerk of the District Court of the United States for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of stipulation as to certain facts in the cause, in the

cause entitled, "J. D. Spreckels & Bros. Co. vs. Ship 'Musselcrag,' etc.," No. 12,145, and now remaining on file and of record in my office. And I further certify that the same constitutes and forms a part of the Apostles on Appeal in the said cause.

Attest my hand and the seal of the said District Court this 3d day of February, 1905.

[Seal]

JAS. P. BROWN,
Clerk.

[Endorsed]: No. 1167. United States Circuit Court of Appeals for the Ninth Circuit. C. W. Corsar, Claimant and Owner of the British Ship "Musselcrag," vs. J. D. Spreckels & Bros. Co., a Corporation, and Vice Versa. Stipulation as to Certain Facts in the Cause. Filed Feb. 3, 1905. F. D. Monckton, Clerk.

At a stated term, to wit, the October term A. D. 1904, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City and County of San Francisco, on Monday, the twentieth day of February in the year of our Lord one thousand nine hundred and five. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Honorable ERSKINE M. ROSS, Circuit Judge, Honorable THOMAS P. HAWLEY, District Judge.

C. W. CORSAR, Claimant and Owner
of the British Ship "MUSSELCRAG,"
Appellant,

vs.

J. D. SPRECKELS & BROS. CO. (a
Corporation),

Appellee,

and

J. D. SPRECKELS & BROS. CO. (a
Corporation),

Appellant,

vs.

C. W. CORSAR, Claimant and Owner
of the British Ship "MUSSELCRAG,"

Appellee.

No. 1167.

Order Granting Motion to File Deposition of Captain Robert Johnston.

The motion of counsel for the appellant C. W. Corsar, claimant, etc., for permission to file the deposition of Captain Robert Johnston, having been heretofore and

on the 6th day of February, 1905, submitted to the Court for consideration and decision, and having been duly considered, it is ordered that the said motion be, and hereby is granted.

In the United States District Court for the Northern District of California.

J. D. SPRECKELS BROS. & CO. }

vs. }

British Ship "MUSSELCRAG." }

Deposition of Captain Robert Johnston.

It is hereby stipulated that the deposition of Captain Robert Johnston, for use on appeal to the Circuit Court of Appeals, in the above cause may be taken upon the interrogatories and cross-interrogatories hereunto annexed before any consular officer of the United States at Liverpool, or before any notary public, who is hereby authorized to administer an oath to the witness, to cause his answers to be taken down in shorthand and transcribed and to certify to the said deposition and cause it to be returned endorsed upon the envelope with the name of this cause to George E. Morse, Esq., Clerk of the United States District Court, San Francisco, California.

When the said deposition shall be taken and returned as aforesaid, the claimant upon perfecting the appeal shall, if so advised, apply under the rules for an order that further testimony be allowed to be taken and if

such order be granted the said deposition shall be deemed to have been taken under the said order.

All objections to questions and answers in said deposition, except as to the form thereof, as well as all objections to the introduction of said testimony in the Court of Appeals are hereby reserved.

NATHAN H. FRANK,

Proctor for Libelant.

PAGE, McCUTCHEN & KNIGHT,

Proctors for Claimant.

*In the District Court of the United States for the Northern
District of California.*

J. D. SPRECKELS BROTHERS & COMPANY,	Libelant,	}
vs.		
British Ship "MUSSELCRAG," etc.		

Interrogatories to be Propounded to Robert Johnston, a Witness
Produced on Behalf of the Claimants.

1. Please state your name, age, residence and occupation.

2. If you are master of a vessel, state of what vessel, you are now master and who the owners of such vessel are.

3. Are you the same Robert Johnston who was master of the "Musselcrag" in the month of July, 1900, and who testified by deposition on behalf of the claimants of the "Musselcrag" at San Francisco in a suit brought

to recover for damage to cement by J. D. Spreckels Bros. & Company?

4. Do you remember the fact that on the voyage from Liverpool to San Francisco referred to in your deposition taken at that time you failed to round Cape Horn and that you then sailed eastward?

5. State to the best of your recollection when it was that you changed your course with the intention of taking the eastward passage, and state further where your ship was at that time.

6. You stated in your examination by deposition on the occasion already referred to that you started for the east, abandoning the effort to go round Cape Horn, on November 4th, 1899, and that you were then in latitude 56.34 south, longitude 60.34 west. Assuming that you were correct in these statements, how far was your ship on that day from Port Stanly in the Falkland Islands?

7. Why did you not sail for Port Stanly, in the Falkland Islands to make repairs instead of undertaking the passage by the Cape of Good Hope before making repairs?

8. What evidence, if any, was there in the condition of your ship to show that it was dangerous to her cargo to carry it forward without putting back to Port Stanly?

9. In your judgment as a master mariner was it a prudent or imprudent thing to do to turn back to Port Stanly under the conditions in which you found your ship on or about November 4, 1899.

10. In your judgment as a master mariner, under

all the conditions which presented themselves to your mind on November 4, 1899, what was the prudent and proper course for you to follow regarding the navigation of the ship having regard to the interests of ship and cargo.

11. If there be any other matter within your knowledge on the subject inquired of in the above interrogatories, please state the same fully and particularly.

PAGE, McCUTCHEM & KNIGHT,
Proctors for Claimant.

No cross-examination.

NATHAN H. FRANK.

In the United States District Court for the Northern District of California.

J. D. SPRECKELS BROS. & Co. }

vs. }

British Ship "MUSSELCRAG." }

The Answers of Robert Johnston to the Interrogatories Annexed
Hereto.

1. Robert Johnston; aged 51; Lake View, Valentines Road, Ilford, Essex; Shipmaster.
2. Ship "Glenburn." Robert Shankland & Co., Greenock.
3. Yes.
4. Yes. The voyage was from Antwerp to San Francisco, not from Liverpool as mentioned in the interrogatory.

5. Fourth November, 1899. Latitude 56.34 S. Longitude 60.34 west.

6. Three hundred and seven miles.

7. I did not on the 4th November, 1899, anticipate having to put into any port of refuge to repair.

8. None at that time. The extensive damage subsequently repaired at Sydney was not then anticipated and was not ascertained until some weeks after the 4th November after we had an opportunity of making an examination.

9. I did not consider it necessary on the 4th November, 1899, to put into any port. For the reasons stated in the answer to the next interrogatory it would not have been prudent in my opinion to have put back to Port Stanly.

10. On the 4th November, 1899, when I ceased my attempt to round Cape Horn to the westward and bore away to the eastward I could have made Port Stanly but my object in going east was to complete the voyage to San Francisco as soon as possible under the circumstances. My thirty-five years' sea experience led me to expect favorable weather and winds by going east. When I bore away to the eastward I did not as already stated anticipate the necessity of putting into any port to repair. To the best of my recollection it was some three weeks after bearing away from the Horn when the weather became more favorable and we had an opportunity of thoroughly examining the hold and found a considerable number of the bulwark stanchion nuts

broken off under the stringer plate, that I first considered it might be advisable to put into some port to repair. Before we were able to properly examine this part of the hold, we had to move a considerable portion of the cement, which was stowed a tier higher in the mid-ship part of the 'tween decks. When I bore away to the eastward, I believed my ship was in a fit condition to carry her cargo safely to San Francisco without any repairs. I further considered that the most prudent and proper course to pursue was to get my cargo to its port of destination as quickly as possible and without detention for repair and probable discharge and restowage. As a master of considerable experience I may state that had it occurred to me on the 4th November, 1899, that it might be necessary to put into some port for repairs, I should have avoided the Falkland Islands, being aware that the continuous bad weather in those latitudes makes the steady progress of work impossible and that the scarcity of workmen renders despatch a matter of the laborers' convenience and pleasure, thus causing endless delay, which would have been prejudicial to my then already partially damaged cargo of cement. Further the expense of executing the repairs would have been greatly increased and the expenses incidental to the laying in port would also be increased.

11. I have had thirty years' experience in the Australian trade, passing round the Cape of Good Hope to the eastward at all seasons of the year and I felt convinced that with the run of weather I had encountered on those passages there was nothing in that passage to further

damage the "Musselcrag" or her cargo, and I certainly never anticipated the exceptionally heavy weather we experienced whilst running down our easting between the Cape of Good Hope and the Australian Coast. On the Australian Coast our decks looked as well as when we left Antwerp and the seams were good and had it not been for the damage discovered after the 4th November, 1899, the steering gear breaking down, and the fear of not being able to replenish our supply of water and the possibility of meeting with heavy weather in the Pacific, I should have continued our passage to San Francisco and not have put into Sydney. On arrival at Sydney, our cargo, except for the salt water stains, appeared to be in good order and the hold dry. I acted in the best of my judgment as a master mariner and I say I adopted the most prudent course possible under the circumstances regarding the navigation of the ship and the interests of the ship and cargo.

ROB. JOHNSTON.

JOHN DICKINSON,

Notary Public.

I, the undersigned, Vice and Deputy Consul of the United States of America, for the Port of Liverpool, and its dependencies, do certify and make known, to whom these presents shall come, that the signature John Dickinson to the annexed Certificate subscribed is genuine. That the said John Dickinson is a Notary Public of respectability, doing business in Liverpool and that to the said Certificate, as signed, in my opinion full faith and credit are due.

Given under my Hand and Seal of Office in Liverpool, this 9th day of Jany., and year of our Lord one thousand nine hundred and four.

[Seal]

W. J. SULIS,
Vice and Deputy U. S. Consul.

State of California,

City and County of San Francisco.

} ss.
} Ship "Musselcrag."

Robert Johnston, being duly sworn, deposes and says: that he has read the foregoing interrogatories and answers thereto and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes it to be true.

ROB. JOHNSTON.

Subscribed and sworn to before me this 9th day of January, 1904.

[Seal]

JOHN DICKINSON,
Notary Public, Liverpool.

[Endorsed]: No. 1167. United States Circuit Court of Appeals, for the Ninth Circuit. In the District Court of the United States, Northern District of California. J. D. Spreckels Brothers & Company, Libelant, vs. British Ship "Musselcrag," etc. Deposition of Captain Robert Johnston. Interrogatories to be propounded to Robert Johnston, a witness produced on behalf of the claimants, and the answers thereto.

No. 1167. United States Circuit Court of Appeals for the Ninth Circuit. Filed pursuant to order of Court, entered: Feb. 20, 1905. F. D. Monckton, Clerk.